

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
FTX TRADING LTD., et al., Case No. 22-11068 (JTD)  
Debtors. (Jointly Administered)  
. . . . .  
AUSTIN ONUSZ, CEDRIC KEES  
VAN PUTTEN, NICHOLAS J.  
MARSHALL AND HAMAD DAR, ON  
BEHALF OF THEMSELVES AND ALL  
OTHERS SIMILARLY SITUATED,  
Plaintiffs,  
v. Adv. Pro. No. 22-50513 (JTD)  
WEST REALM SHIRES INC., WEST  
REALM SHIRES SERVICES INC.  
(D/B/A FTX US), FTX TRADING  
LTD., ALAMEDA RESEARCH LLC,  
SAM BANKMAN-FRIED, ZIXIAO Courtroom No. 5  
WANG, NISHAD SINGH AND 844 King Street  
CAROLINE ELLISON, Wilmington, Delaware 19801  
Defendants. Thursday, June 8, 2023  
. . . . . 9:00 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 9:05 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning, everyone. Thank you.  
4 Please be seated.

5 MR. LANDIS: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. LANDIS: And may it please the Court, Adam  
8 Landis from Landis, Rath & Cobb, here on behalf of FTX  
9 Trading Limited and its affiliated debtors.

10 Your Honor, the parties are mindful of the limited  
11 time we have in court today. I understand Your Honor needs  
12 to leave the bench at 2, and --

13 THE COURT: No later than 2.

14 MR. LANDIS: No later than 2.

15 THE COURT: I'm going to push through, there will  
16 be no lunch break. We'll just push through until we get to  
17 some time between 1:30 and 2 --

18 MR. LANDIS: Terrific, Your Honor.

19 THE COURT: -- whenever there's a convenient break  
20 point.

21 MR. LANDIS: And we aim to use the time as  
22 efficiently as possible.

23 Based on the parties' travel plans -- a lot of  
24 people have come a long way for this hearing today -- the  
25 parties have determined to go forward first, with Your

1 Honor's permission, with Item Number 8, which is the JPLs'  
2 motion for a declaration regarding the automatic stay; or, in  
3 the alternative, lifting the stay, and we would move  
4 everything else to the back of the agenda.

5 Those items that need to go to the back of the  
6 agenda are Item Numbers 7 and 9, which are sealing motions.

7 We also have on the agenda Item 4 and 10. Item 4  
8 is the KEIP, which had no objections and we filed a request  
9 to have the order signed. But we also have Item 10, which is  
10 the KEIP sealing order. Objections were due at the hearing  
11 in connection with that, but we have not heard about any  
12 objections that were going to be raised, so we wanted to see  
13 if that -- those matters could be dispatched before we got  
14 going. But if not, we're content to have them moved to the  
15 back of the agenda and dealing with them -- deal with them  
16 there.

17 THE COURT: Yeah, we can deal with the KEIP. It  
18 was submitted under COC, so that --

19 MR. LANDIS: Correct.

20 THE COURT: -- that order will be entered.

21 Is there any objection to the sealing motion?

22 (No verbal response)

23 THE COURT: Hearing no objection, I will enter  
24 that order, as well.

25 MR. LANDIS: Okay. With that, Your Honor, I will

1 cede the podium to counsel to the JPLs.

2 I will note that we did submit a pretrial order  
3 yesterday, a proposed pretrial order that would govern the  
4 conduct of this hearing and, again, aiming towards efficiency  
5 in trying to get everything done to help people to be here  
6 and witnesses to be on and to get out of Dodge, as it were.

7 THE COURT: Okay. Thank you, Mr. Landis.

8 MR. LANDIS: Thank you, Your Honor.

9 MR. ZAKIA: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. ZAKIA: Jason Zakia of White & Case on behalf  
12 of the JPLs.

13 As counsel indicated, we have conferred with  
14 counsel for the debtor, the committee, and the other parties  
15 and have a proposed process to go forth today, with the  
16 Court's permission, and I'd just like to lay that out for  
17 you.

18 First, we -- the parties have agreed to waive  
19 openings and proceed directly to the evidence.

20 THE COURT: Okay.

21 MR. ZAKIA: With respect to the evidence, the  
22 parties have agreed to 40 -- sorry -- 54 joint exhibits,  
23 which were submitted along with the pretrial order, to which  
24 there were no objections. And with the Court's permission,  
25 we would jointly offer those into evidence.



1 THE COURT: Okay. Is there any objection?

2 (No verbal response)

3 THE COURT: They're admitted without objection.

4 (JTX-1 through JTX-54 received in evidence)

5 MR. ZAKIA: All right. There were a handful of  
6 exhibits that the debtors had offered over which there were  
7 some objections. My understanding from counsel to the  
8 debtors are those are withdrawn, so we don't need to address  
9 those.

10 THE COURT: Okay.

11 MR. ZAKIA: And then, with regard to the  
12 witnesses, Your Honor, there are three, two for the JPLs and  
13 one for the debtors.

14 In an effort to keep this as efficient, but yet as  
15 effective as possible, the agreement is -- so we have two  
16 witnesses, one is -- one of JPLs' is Mr. Peter Greaves, who  
17 will be subject to cross-examination. We would propose to  
18 offer his declaration, but still do a brief direct, hitting a  
19 few points. But by offering the declaration, that direct can  
20 be truncated.

21 And then we have a second witness, who is our  
22 foreign law, Bahamian law expert, who I understand will not  
23 be subject to any cross-examination, although she's present  
24 should the Court have any questions. And we would propose to  
25 offer -- to do her testimony simply by the declaration,

1 unless the Court has questions for her.

2 THE COURT: Okay.

3 MR. ZAKIA: And the debtors have one witness, Mr.  
4 Mosely. Similar to Mr. Greaves, he will be subject to cross,  
5 and so I believe they intend to both offer the declaration  
6 and a direct. But putting in the declaration, that direct  
7 can be truncated.

8 THE COURT: Okay.

9 MR. ZAKIA: So, if that works with the Court, we  
10 would proceed to the JPLs' first witness and call Mr. Peter  
11 Greaves.

12 THE COURT: Okay. Mr. Greaves, come forward  
13 please. Please take the stand and remain standing.

14 THE ECRO: Please raise your right hand. Please  
15 state your full name and spell your last name for the court  
16 record please.

17 THE WITNESS: Peter James Greaves, G-r-e-a-v-e-s.  
18 PETER GREAVES, WITNESS FOR THE JOINT PROVISIONAL LIQUIDATORS,  
19 AFFIRMED

20 THE ECRO: You may be seated.

21 THE WITNESS: Your Honor.

22 THE COURT: Okay. You may proceed.

23 MR. ZAKIA: Thank you, Your Honor.

24 As I indicated, Mr. Greaves submitted a  
25 declaration, it can be found at Docket Number 1194 -- in

1 support of the JPLs' motion, and we would offer that  
2 declaration into evidence at this time.

3 THE COURT: Any objection?

4 (No verbal response)

5 THE COURT: It's admitted without objection.

6 (Greaves Declaration received in evidence)

7 MR. ZAKIA: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. ZAKIA:

10 Q Mr. Greaves, good morning.

11 A Good morning.

12 Q Could you please introduce yourself to the Court and  
13 tell us what you do for a living, sir?

14 A Yes. Good morning, Your Honor. My name is Peter James  
15 Greaves. I am a partner in PricewaterhouseCoopers based in  
16 Hong Kong, and my role there is to lead PwC's insolvency and  
17 restructuring practice across Asia Pacific.

18 Q And roughly how large is the group that you lead at  
19 PricewaterhouseCoopers?

20 A Across Asia, it's several hundred partners and staff.

21 Q And how long have you worked as a restructuring  
22 professional?

23 A I think I'm in year 33.

24 Q And do you have any special licenses that you use in the  
25 course of your job as a restructuring professional?

1 A I'm licensed as an insolvency practitioner to take -- to  
2 take formal appointments, such as liquidations,  
3 administration, receiverships, et cetera, licensed in the  
4 U.K.

5 Q Now could you describe for us, please, sir, the types of  
6 jurisdictions and the various jurisdictions in which you've  
7 worked over the course of your career?

8 A Yes. I've worked on cases in a large number of  
9 jurisdictions, maybe -- maybe 20 or more. But -- but in a  
10 smaller number of countries, I've taken appointments, and  
11 they tend to be jurisdictions that follow common law of have  
12 their insolvency law based on U.K. law, in order that there's  
13 commonality with those systems.

14 Q Now, over the course of your career, could you just  
15 describe for the Court the experience you've had with  
16 liquidations or provisional liquidations under the English  
17 system?

18 A Yes. As mentioned, I -- I've been involved in a number  
19 of different formal appointments, varying slightly by  
20 jurisdiction, but liquidations, I think I would have been  
21 involved in, you know, perhaps a hundred or more over my  
22 career so far.

23 Q And could you describe for us, please, sir, under the  
24 English system, what the duties of a liquidator are?

25 A Yes. At its simplest, it's to investigate and establish

1 the assets of an estate and, on other side of the tally, to  
2 investigate and establish the creditors, the liabilities of  
3 the estate, and to try and match those with -- with the other  
4 side.

5 Q Now is -- prior to your work on the FTX Digital Markets  
6 case, had you ever served as a liquidator in any case in the  
7 Bahamas?

8 A I have not.

9 Q And could you please describe for me what the  
10 requirements are or qualifications for a liquidator or a  
11 provisional liquidator to serve in the Bahamas?

12 A Yes. To take a -- to present oneself to the Court as  
13 being able to take such an appointment, the practitioner  
14 needs to be locally based and locally experienced or have a  
15 qualification or a license recognized by the Supreme Court of  
16 the Bahamas. And the U.K. license that I hold qualifies. I  
17 think there are maybe two more, maybe Canada and Australia,  
18 as well, allow one to take appointments in -- in the Bahamas.

19 Q Now I'd like to shift a little bit to talk about this  
20 particular engagement.

21 Who appointed you to your role as a joint provisional  
22 liquidator for the Estate of FTX Digital Markets?

23 A The appointment was made by the -- the Supreme Court of  
24 the Bahamas.

25 Q And when did that occur?

1 A I was appointed on Monday, the 14th of November, 2022.

2 Q Prior to your appointment as a joint provisional  
3 liquidator for FTX Digital Markets, did you have any  
4 connection or involvement with FTX or any of its affiliates?

5 A No. None whatsoever, no.

6 Q Prior to your appointment as a joint provisional  
7 liquidator, did you have any connection or involvement with  
8 any of the founders of FTX?

9 A No, I did not.

10 Q Now could you please describe for the Court, generally,  
11 what, if any, fiduciary duties you have in your role as a  
12 joint provisional liquidator and who those duties may run to?

13 A Yes. The provisional liquidators are supervised by the  
14 appointing court. The primary fiduciary duty is to the  
15 creditors of the -- of the company or creditors of the  
16 company.

17 Q Now, as a joint provisional liquidator for FTX Digital  
18 Markets, what is it -- what is your goal? What is it that  
19 you're trying to accomplish?

20 A At the risk of repeating slightly an earlier question, I  
21 -- I would -- I would summarize as trying to establish the --  
22 the nature and quantum of assets caught within the perimeter  
23 of the estate as of the date of insolvency and to establish  
24 and make contact with the creditors of the estate.

25 Q Now what brings us here today is an application that the

1 JPLs would like to file in the Supreme Court of the Bahamas.

2 Could you describe for the Court what that application  
3 is?

4 A Again, it relates to the two main points that I just  
5 mentioned. But we are looking for guidance from the Bahamas  
6 Court on how we may proceed. The provisional liquidators are  
7 very much expected to make their own decisions as far as  
8 possible, if it's within the duties accorded to them by the  
9 law and the order appointing them. But if the liquidators  
10 reach a stage where they need to take directions, then we're  
11 obliged to do that by referring to the Bahamas Court.

12 And that's what this application relates to. It's  
13 seeking directions on a number of points critical to the  
14 execution of our roles.

15 Q And I think you said two of things that you try to  
16 identify as a joint provisional liquidator are assets and  
17 liabilities of the estate.

18 Could you give the Court an example of a specific  
19 matter related to the assets of FTX Digital Markets from  
20 which you require direction from the Bahamian Court?

21 A Yes. The -- without necessarily going through all of  
22 them, the assets that, from the records we have, appear to be  
23 in the estates or likely in the estate, if the asset were  
24 cash in bank accounts, potentially digital assets. And then  
25 there's some real property and -- and other "chattel assets,"

1 I describe them as. There are questions around who those  
2 assets belong to.

3 And if I take the example of cash, the cash that was in  
4 the name of FTX Digital at the outset of the insolvency were  
5 principally in two types of accounts:

6 Either accounts that appeared to be operated for  
7 general expenses and were either marked as such or not marked  
8 in any particular way at all;

9 And there are other accounts that we took over that are  
10 marked "for the benefit of," not necessarily stating who they  
11 were held for the benefit -- benefit of, but the assumption  
12 is that they may be held in trust for the benefit of  
13 customers.

14 And until we can establish, A, that those cash assets,  
15 for example, sit within the perimeter of the estate -- and it  
16 appears that they do, they're in accounts in the name of the  
17 entity -- and until we can establish on what basis they're  
18 held, whether they're held as a general asset of the estate  
19 or on trust for the beneficiaries -- which appear may be the  
20 customer or customers -- then we -- we can't proceed.

21 Q Now shifting to the other side of the leather -- ledger.  
22 Could you give the Court an example of an issue with respect  
23 to the liabilities of the FTX Digital Markets estate from  
24 which you would like to seek or need to seek guidance from  
25 the Bahamian Court?



1 A Yes. The -- I suppose the principal challenge that we  
2 are facing or the collective estates are facing is that it's  
3 unclear from the evidence we have available to us to what  
4 extent customer relationships transferred or -- or migrated  
5 to FTX Digital from FTX Trading. We see evidence that  
6 strongly suggests to us that that is likely to have happened.  
7 But again, in order to proceed, we need guidance from a court  
8 and -- and to get some input into that.

9 Q Now, in the 33 years that you have worked as a  
10 restructuring professional and in the 100 cases in which  
11 you've been involved in a liquidator, have you ever before  
12 sought permission from a foreign court in order to go to the  
13 appointing court to seek direction?

14 A I have not needed to. I don't -- I don't recall a time  
15 when I've had to do that, no.

16 Q So can you explain why you're doing that here?

17 A We -- the -- the JPLs prepared this application for the  
18 reasons I've explained, and we shared that information with  
19 the debtors under the corporation agreement, to let them know  
20 what we're intending to do. And that drew a two prong  
21 response:

22 Firstly, an adversary proceeding was filed in this  
23 court very quickly thereafter.

24 And secondly, we were put on notice that the debtors  
25 believe that we would be willfully breaching the stay if we

1 proceeded with that application. So, certainly speaking for  
2 myself -- but I think I speak for all three JPLs, I was  
3 motivated not to fall afoul of -- of such a breach, if that  
4 were the case.

5 Q Now could you explain to Judge Dorsey what, if any,  
6 consequences would follow for the JPLs and for the  
7 provisional liquidation in the Bahamas if the JPLs are not  
8 able to file the application for which you're seeking  
9 permission?

10 A From a very practical perspective, we can't do our jobs.  
11 And to -- yeah, to describe that another way, we can't  
12 fulfill our duties. We're -- we're unable to do the two  
13 basic things I described at the outset, which is having  
14 clarity around the assets within the estate and -- and who  
15 they -- who they might belong to.

16 Q Now I just want to make sure I understand a little more  
17 about the duties that you have as a provisional liquidator,  
18 as you understand them.

19 Let's say you woke up this morning and decided you  
20 wanted to make your life a lot easier and save us all a lot  
21 of time. Do you, as a JPL, have the power or the authority  
22 to just give up and close the provisional liquidation?

23 A No. No, I do not.

24 Q Do you, as a JPL, have the authority to just give up on  
25 the effort to identify customers and agree that, to the

1 extent any customers migrated to FTX Digital Markets, you  
2 would send them back to FTX Trading or some other entity?

3 A No such discretion without -- without the permission of  
4 the Court or the agreement of the Court, of the Bahamas  
5 Court, to do so.

6 Q And you know, we're here in Delaware, it's a lovely  
7 city. Judge Dorsey is an excellent judge.

8 Do you have the authority as a JPL to just agree that  
9 you are going to take your directions from a U.S. Court,  
10 rather than the Bahamian Court, on any of these issues?

11 A I do not, no. The -- the duties we have are set out in  
12 statutes and supplemented in the order appointing us and  
13 there -- there is no such discretion or power.

14 Q And under the Bahamian law, you are required to take  
15 direction from which court?

16 A The Supreme Court of the Bahamas.

17 Q Thank you.

18 MR. ZAKIA: Your Honor, at this point, we would  
19 rest on his declaration for the rest of his direct testimony  
20 and I have no further questions at this time.

21 THE COURT: Okay. Thank you.

22 Cross.

23 MR. GLUECKSTEIN: Thank you, Your Honor. Good  
24 morning.

25 CROSS-EXAMINATION

1 BY MR. GLUECKSTEIN:

2 Q Good morning, Mr. Greaves.

3 A Good morning, Mr. Glueckstein.

4 MR. GLUECKSTEIN: For the record, Brian  
5 Glueckstein of Sullivan & Cromwell on behalf of the FTX  
6 Chapter 11 debtors before this Court.

7 BY MR. GLUECKSTEIN:

8 Q Mr. Greaves, you are not a lawyer, correct?

9 A I am not a lawyer. That is correct, yes.

10 Q And you're not offering any legal opinions in any part  
11 of your testimony, either in your declaration or in your  
12 testimony this morning?

13 A I, myself, am not, no.

14 THE WITNESS: Sorry, Your Honor.

15 Q And Mr. Greaves, you, Mr. Simms, and Mr. Cambridge are  
16 charged to act jointly as provisional liquidators with  
17 respect to FTX Digital Markets, correct?

18 A Yes, that's correct.

19 Q In terms of day-to-day work, you personally are more  
20 involved in the financial analysis and digital asset issues  
21 or aspects of the assignment, correct?

22 A That -- that is correct. Not to the exclusion of any  
23 other area, but -- that I would say that they're the areas  
24 that I spend more time in than others.

25 Q And Mr. Greaves, with respect to as -- well, as you sit

1 here today, the current unrestricted cash position of FTX  
2 Digital Markets is approximately \$1 million or so. Is that  
3 correct?

4 A That -- that's correct.

5 Q And the other cash that's currently controlled by the  
6 JPLs is in "for benefit of" accounts. Is that correct?

7 A Yes, that -- that's right, or accounts where we can see  
8 that the activity that went on in the account looks like it  
9 may have been for the benefit of customers.

10 Q And FTX Digital Markets has unpaid accrued expenses that  
11 have been incurred in connection with the work that you and  
12 your team are doing that it exceeds the \$1 million that you  
13 have on hand, correct?

14 A That is correct, yes.

15 Q And in fact, you estimate that amount to be somewhere in  
16 the -- currently, in the five-to-ten-million-dollar range of  
17 unpaid expenses, correct?

18 A Yes, that is correct.

19 Q And Mr. Greaves, the only cryptocurrency that the JPLs  
20 currently control is an estimated \$200,000 or so of illiquid  
21 coins that are in a single wallet, correct?

22 A That's correct, yes.

23 Q And the only basis to believe that those cryptocurrency  
24 assets actually belong to FTX Digital Markets is that an  
25 employee gave you the keys to those assets and stated as

1 much, correct?

2 A That is correct, yes.

3 Q Okay. And you have not been able to independently  
4 verify that those assets belong to FTX Digital Markets.

5 A No, I have not.

6 Q Otherwise, the JPLs control minimal other liquid assets  
7 today, correct?

8 A That's right. Other assets within our estate are no  
9 longer or not currently within our control.

10 Q Mr. Greaves, you testified this morning that the JPLs  
11 would -- the consequences of the bankruptcy stay remaining in  
12 place would be that the JPLs, including yourself, would not  
13 be able to do your jobs, as you put it, correct?

14 A Yes, that's correct.

15 Q Okay. With respect to -- you also testified this  
16 morning that you don't have the power to take -- in your  
17 view, take directions from this Court with respect to  
18 questions of assets of the FTX group estates, correct?

19 A Yes, that's correct.

20 Q And would you agree with me, sir, that this Court is  
21 capable of considering and answering the same questions with  
22 respect to ownership of assets and liabilities that are  
23 raised in your proposed application?

24 A I have no doubt of the ability or capability of the  
25 Court to do that. My point is just that I'm not allowed to

1 seek that guidance.

2 Q But if the Court -- if this Court were to deny the  
3 motion today and the automatic stay stays in place, and this  
4 Court were to provide answers to the questions, you would, in  
5 fact, have answers to the questions as to who owns which  
6 assets and liabilities, correct?

7 A I'd still be obliged to go to the Bahamas Court to seek  
8 directions and get guidance on -- on the position, whatever -  
9 - whatever this Court found.

10 Q And you would be able to do that at a later date armed  
11 with the findings of this Court as to those assets, same  
12 assets and liabilities, which of -- those of which have been  
13 determined to be assets of the Chapter 11 debtors, correct?

14 A I disagree with that. I -- we're already hamstrung in  
15 this case for various reasons and haven't been able to  
16 achieve as much in the first seven months as I said we would  
17 have expected or -- or what I think is commensurate with our  
18 duties. So, to accede to further delay whilst a court --  
19 another court comes to a decision, when I do not have the  
20 power to make that position, I don't think is a tenable  
21 position for the JPLs.

22 Q And the question was a little bit different, Mr.  
23 Greaves.

24 Notwithstanding your stated need to move forward now,  
25 if this Court were to make determinations with respect to

1 property of the estate as between the Chapter 11 debtors and  
2 FTX Digital Markets, you would then be able to go, with  
3 permission of this Court, to the Bahamas Court and seek  
4 directions at that point, couldn't you?

5 A In theory, I could. But I don't believe that that is in  
6 keeping with the duties that I've been charged with.

7 Q Have you made any requests to the Court in the Bahamas  
8 to permit this Court to decide the issues that are presented  
9 in the Chapter 11 debtors' adversary proceeding?

10 A I have not, for fear of the consequences that I  
11 mentioned earlier because we were put on notice by the  
12 debtors.

13 Q And I think you testified in your statements this  
14 morning, Mr. Greaves. But you are familiar with the  
15 adversary proceeding complaint that was filed by the Chapter  
16 11 debtors before this Court, correct?

17 A I have read it, yes.

18 Q And in fact, the FTX Debtors have asked this Court to  
19 address the issues the JPLs raised in the adversary  
20 proceeding complaint with respect to assets and liabilities  
21 of the -- of both estates, correct?

22 A Yeah, I -- I understand that the adversary proceeding  
23 will need to be heard in due course if it's not dealt with  
24 otherwise, and I believe, from reading it, that it deals with  
25 similar -- or issues that cross over.



1           My point is a different one, that I'm -- that's a  
2 separate proceeding here and I still have to deal with my own  
3 court in the Bahamas and report to it and seek directions  
4 from the Bahamas Court.

5       Q     And it's your understanding, Mr. Greaves, that,  
6 irrespective of what happens with respect to the motion  
7 pending today, the FTX Debtors' adversary proceeding will  
8 proceed before this Court, correct?

9       A     I assume that it will, yes.

10      Q     And you have no objection to that adversary proceeding  
11 and the issues contained therein proceeding before this  
12 Court, correct?

13           MR. ZAKIA: Objection. Your Honor. The pleadings  
14 in that case speak for themselves. We filed a motion to  
15 dismiss. So I don't know if counsel is trying to get the  
16 witness to opine on how that's going to get resolved, but we  
17 do have a motion to dismiss that case pending.

18           MR. GLUECKSTEIN: I am not asking him to opine on  
19 the legal issues, Your Honor. I was simply asking whether,  
20 from the -- from a process standpoint, whether Mr. Greaves,  
21 as a JPL, has any objection to proceedings continuing before  
22 Your Honor.

23           THE COURT: You can answer it the best you can.

24           THE WITNESS: Thank you.

25           From a nonlegal perspective, Mr. Glueckstein, just

1 going back to how you originally phrased the question, I  
2 don't agree with what's asserted in the -- personally, in my  
3 capacity as a JPL, do not agree with what is asserted in the  
4 adversary proceeding.

5 But non-lawyerly -- lawyerly understanding of that  
6 proceeding is that it will be dealt with in this Court,  
7 unless it is dealt with in some other way, unless it is  
8 either dismissed or -- or there's some other way of it being  
9 dealt with. I understand that to be the case.

10 BY MR. GLUECKSTEIN:

11 Q One of the other things you testified about this  
12 morning, Mr. Greaves, and in your declaration, concerns what  
13 you referred to as the "liabilities side" and "contacting  
14 customers." Do you recall that?

15 A Yes.

16 Q The JPLs have actually sent two notices to approximately  
17 2.3 million FTX.com customers, requesting those customers  
18 provide contact details to you through a website, correct?

19 A Yes. The intention of sending that note was to reach  
20 out to FTX Digital customers for the purpose of letting them  
21 know that the provisional liquidation is entrained and  
22 requesting them to submit contact details.

23 Q And it's true, Mr. Greaves, correct? That the JPLs used  
24 contact information for these 2.3 million customers obtained  
25 from a file that was pulled from an employee commuter --

1 computer in the JPLs' possession.

2 A That is correct, yes.

3 Q And the JPLs did not do anything to vet that list as to  
4 whether those names on it were customers of FTX Digital  
5 Markets before reaching out to those 2.3 million people in  
6 January of 2023, correct?

7 A The vetting that we carried out was to look at the file.  
8 And it was marked as a list of customers. It was on the  
9 machine of an FTX Digital employee. And in discussions with  
10 employees, remaining employees, it -- it seemed to us that it  
11 was the best record that we have or had. But I believe it's  
12 still the best record that we have of potential creditors of  
13 FTX Digital. And the duty that we have is to reach out to  
14 potential creditors.

15 And in all circumstances, being starved of other data,  
16 which I firmly believe belongs to the estate of FTX Digital,  
17 we did, indeed, take the decision to proceed to reach out,  
18 per our duties, to contact potential creditors.

19 Q But in fact, Mr. Greaves, you don't have information to  
20 know, one way or the other, whether any employee from whose  
21 that file was extracted was an employee solely of FTX Digital  
22 Markets or is an employee of FTX Digital Markets and other  
23 entities in the FTX group, correct?

24 A I have some idea. I am -- there are certain employees  
25 I'm aware of who were double- or triple-hatted. They had

1 roles with one or more entity.

2       There were other employees who, from the payroll  
3 records, I can see were only ever employed by FTX Digital.  
4 And I suppose the largest category of the latter would be  
5 those hired into the group for the first time after the  
6 creation of Digital, of FTX Digital, in the Bahamas. I  
7 personally think it would be very unlikely that they would  
8 have been previously employed by other FTX group companies  
9 and highly unlikely that they were also employees of other  
10 group companies.

11 Q Did you -- from whose computer was this list came?

12 A I don't recall, sitting here, which -- which of the  
13 employees it was on.

14 Q Do you know whether you did an analysis to determine  
15 definitively whether the employee's machine from whose that  
16 file was extracted was an employee of FTX Digital Markets?

17 A Yes. I -- I think the way we looked at -- from memory,  
18 the way we looked at the machines in our possession -- and  
19 just by way of background, there were a number of laptops and  
20 desktops in the office site when we took over -- we were  
21 careful to divide them up in -- between employees of FTX  
22 Digital and, as far as we were aware, non-employees. And  
23 there were, indeed, computers for employees of other group  
24 companies in -- to use the terminology of these proceedings,  
25 in different silos, not actually in the FTX.com silo.

1 Q As you sit here today, Mr. Greaves, you do not know  
2 whether anyone of the 2.3 million people on the list to whom  
3 you sent creditors is, in fact, a creditor -- that you sent  
4 notices is, in fact, a creditor of FTX Digital Markets,  
5 correct?

6 A And that's precisely one of the questions I want to ask  
7 the Bahamas Court. I -- I need help to understand that. I  
8 have reason to believe that they are likely to be FTX Digital  
9 creditors, but I need help in deciding that.

10 Q Okay. But before getting that answer, you have put two  
11 mailings out to 2.3 million people suggesting that they might  
12 be creditors of FTX Digital Markets, correct?

13 A That's right, in accordance with my duties.

14 Q And to date, there have been approximately 46,000  
15 individuals who have registered at your website. Is that  
16 correct?

17 A That might be slightly out of date, but yes, I think  
18 forty, forty-five, 50,000, so far.

19 Q You testified this morning that -- and in your  
20 declaration that, in your view, it is "likely" -- I believe  
21 is the term you used this morning -- that there are cash and  
22 digital assets, potentially other assets in the estate of FTX  
23 Digital Markets, correct?

24 A That's correct.

25 Q You also testified that you believe that customers have

1 moved or migrated prior to filing for liquidation from FTX  
2 Trading to FTX Digital Markets, correct?

3 A That's right.

4 Q And you've reached that conclusion based on a five-page  
5 document called a "migration plan" that's attached -- that  
6 was attached to your declaration, interviews with a handful  
7 of employees, and publicly available announcements, correct?

8 A They're certainly three of the pieces of evidence or  
9 factors that helped me form the view that you set out a  
10 little while ago.

11 Q All right. So, other than those three pieces, have --  
12 what other pieces of evidence have you identified and  
13 reviewed that allow you to testify that it is likely that  
14 customers moved to Digital Markets?

15 A I -- this may not be exhaustive, but let me -- let me  
16 try and try to keep it brief.

17 If I -- if I have to use as a crutch the chronology, I  
18 take it Digital was set up in July of 2021. It began to both  
19 hire new employees and take transfers for existing group  
20 employees onto its payroll based on the Bahamas.

21 In September 2021, it was licensed by the Securities  
22 Commission of the Bahamas. And I understand the purpose of  
23 the license was allow -- to allow it to provide services and  
24 operate the international exchange.

25 I understand that the migration plan was part of that

1 application, looking at the date of it. I'll come back to  
2 the migration plan in a moment.

3 By November 2021, bank accounts were opened in the name  
4 of FTX Digital. That continued through until, I think,  
5 January. There are a number of accounts, both in the U.S.  
6 and overseas, in a number of denominations.

7 And the hard -- piece of hard evidence that we do have  
8 -- we are denuded over full details of -- of the platform,  
9 but we do have -- we put together the pieces of the puzzle to  
10 look at bank statements for the accounts that I've just  
11 spoken to, and they indicate payment flows from customers,  
12 many, many, many transactions, you know, perhaps millions of  
13 transactions in the period from January -- or certainly the  
14 intense period of January of '22 through to November, when  
15 FTX Digital failed. And in aggregate, those customer flows,  
16 receipts and payments, looked to be in the order of 13  
17 billion U.S. Dollars. So bank statement evidence, I -- I  
18 would -- I would include, as well.

19 Mr. Glueckstein referred to conversations with -- with  
20 employees. Again, many of the employees had left by the time  
21 we were appointed, but some fairly key ones remained. The  
22 then co-CEO and COO was still available to us. I'm not  
23 referring to Mr. Bankman-Fried. And she was able to give a  
24 view on migration, migration of customers between FTX Trading  
25 and -- and FTX Digital, and also to point out that a KYC

1 exercise, know your customer exercise, was carried out per  
2 the migration plan.

3 As Mr. Glueckstein says, the migration plan is a fairly  
4 short document, five pages. But it refers to a GAAP analysis  
5 of the KYC requirements needed to comply with the -- with the  
6 license granted in the Bahamas. And I understand that there  
7 was a lot of activity in -- during 2022 to contact customers,  
8 let them know of the intention to migrate their contracts  
9 from Trading to Digital and, for the purposes of that, to  
10 seek additional evidence from a KYC perspective.

11 The reason for that is that the prior requirements were  
12 less onerous. So -- so, before the Bahamian license, FTX was  
13 required to have evidence on file of -- for institutional  
14 customers of the details of ultimate benefit -- beneficial  
15 ownership -- ownership for 25 percent and above. The  
16 requirement for the Bahamas license was 10 percent and above.

17 So there was a telephone campaign -- I believe with  
18 messages, as well, but we don't have access to those -- to  
19 reach out to customers to achieve that and put the -- the --  
20 the supplemental KYC information on file.

21 I fear that I've perhaps not exhausted the signposts  
22 that lead me to believe that there's a question to be  
23 answered on migration. The -- but -- but I will stop, other  
24 than just mentioning one more, which is -- I'm not a lawyer,  
25 but the terms of service dated 13 May, 2022 also make it very



1 clear to a layman's reading and understanding that the  
2 majority of the services were to be provided by FTX Digital  
3 from that date.

4 And it's our understanding, not least from evidence  
5 provided by the debtors, that those terms of service were  
6 posted on the website and it would -- would have been  
7 publicly available to customers and the world at large.

8 And indeed, when customers, after the new terms of  
9 service, wired funds to the platform, the international  
10 platform, it's my understanding that they saw a popup on  
11 their screen that -- that let them know that they were no  
12 longer sending money to an Alameda affiliate, but would  
13 actually be sending funds to an account in the name of FTX  
14 Digital.

15 To my mind, all of those things lead me to think I need  
16 to go and get some help from the Court and perhaps other --  
17 other experts in -- to determine what that all means.

18 Q Mr. Greaves, you -- everything you just walked through,  
19 you don't have documentation showing a customer ever saw a  
20 popup when they deposited money, correct?

21 A I have some evidence of that, but I -- the place where I  
22 want to look for it, the debtors have denied us access.

23 Q You have not -- you are not aware, as contemplated by  
24 the migration plan, of FTX Digital Markets reporting to the  
25 Securities Commission of the Bahamas any number of customers

1 that had been migrated from FTX Trading to FTX Digital,  
2 correct?

3 A I do not have confirmation of that, no.

4 (Pause in proceedings)

5 Q As you sit here today, you do not know whether any  
6 customer actually migrated from FTX Trading to FTX Digital  
7 Markets, correct?

8 A As I sit here today, my strong personal and professional  
9 view is that there's a body of evidence that suggests that  
10 they did. I'd like, if it's possible, to see more evidence  
11 and, if that isn't possible, to seek directions from the  
12 Bahamas Court on whether migration happened.

13 Q And if this Court answers the questions posed in the  
14 adversary proceeding with respect to which customers, if any,  
15 are customers of FTX -- of the FTX Debtors or FTX Digital  
16 Markets, you will have that answer, correct?

17 A I -- I'm not -- I'm not asking this Court to do anything  
18 or not do anything and I'm not trying to prevent the debtors  
19 from making any application in this Court. We're represented  
20 here, we're in the Chapter 15 proceedings. All I'm saying  
21 is, unless the Bahamas Court instructs me otherwise, I do not  
22 have discretion to not go to the Bahamas Court.

23 Q If this Court, Mr. Greaves, leaves the automatic stay in  
24 place, you will have fulfilled your duties because you asked  
25 to go to the Bahamas Court, correct?

1 A I believe my duty is to go to the Bahamas Court. And as  
2 I said, whilst we're supervised and under court guidance, in  
3 my experience, courts, including the Bahamas Courts, will  
4 expect officeholders to use their tenacity and their  
5 professional experience to get as far as they can.

6 I think that's the situation we're in. And I,  
7 personally, would like comfort from the Court that appointed  
8 me that I'm not falling afoul of any of my duties.

9 Q If this Court were to rule that it was going to  
10 determine the issues set forth in the adversary proceeding  
11 prior to any modification of the stay, you will have done  
12 your job in discharge of your duties, correct?

13 A That may be very helpful if that happened, but I'd still  
14 have to go to the Bahamas Court. I'm personally just failing  
15 to see how I can not seek directions from the Bahamas Court,  
16 and that's the question, I'm -- I'm trying to ask.

17 Q Okay. Thank you.

18 MR. GLUECKSTEIN: No further questions, Your  
19 Honor.

20 THE COURT: Okay. Thank you.

21 Any other cross?

22 MR. PASQUALE: Yes, Your Honor. Ken Pasquale from  
23 Paul Hastings for the official creditors' committee.

24

25

1 CROSS-EXAMINATION

2 BY MR. PASQUALE:

3 Q Good morning, Mr. Greaves.

4 A Good morning, Mr. Pasquale.

5 Q Mr. Greaves, you said a number of different times in  
6 your testimony so far that the application is to seek  
7 direction from the Bahamas Court, correct?

8 A Correct.

9 Q And that there are certain questions you want to raise  
10 with the Bahamas Court, correct?

11 A Yes, that's right.

12 Q But isn't it correct that what you really want to do in  
13 the Bahamas Court is commence litigation to answer those  
14 questions, isn't that right?

15 A I wouldn't agree with that characterization, no. That  
16 could potentially be a consequence of the application, but I  
17 don't know. I am certainly of the -- perhaps even those in  
18 the building, I am the least qualified from a legal  
19 perspective to form a view on that.

20 Q Doesn't the application itself raise -- if you would,  
21 you have as part of your declaration -- let me make sure I  
22 reference the right exhibit, its Exhibit A-1 to your  
23 declaration. There is a section of the proposed application  
24 that speaks to appointment of representative creditors. Are  
25 you aware of that?

1 UNIDENTIFIED SPEAKER: (Inaudible).

2 MR. PASQUALE: Oh, I assumed he had one. Okay.

3 UNIDENTIFIED SPEAKER: (Inaudible).

4 MR. PASQUALE: Yeah, let's do that.

5 THE WITNESS: Thank you. I believe I recall it,  
6 but I think --

7 MR. PASQUALE: I'm sorry.

8 THE WITNESS: No, no, no. I think it would be  
9 prudent for me to refamiliarize myself.

10 MR. PASQUALE: Apologies, Your Honor.

11 THE WITNESS: Happy to look at your copy if it  
12 helps.

13 MR. PASQUALE: Mine is marked up.

14 UNIDENTIFIED SPEAKER: Your Honor, can I approach  
15 the witness?

16 THE COURT: Sure.

17 THE WITNESS: Thank you.

18 MR. PASQUALE: Thank you.

19 THE COURT: Is this also Exhibit 8 in the joint  
20 exhibits?

21 MR. PASQUALE: I don't think it is, Your Honor. I  
22 think that is just the summons.

23 UNIDENTIFIED SPEAKER: No. I think it is, Your  
24 Honor.

25 MR. PASQUALE: Our binder didn't have it.

1 UNIDENTIFIED SPEAKER: It looks like its Joint  
2 Exhibit 8.

3 THE COURT: Okay. I've got it. Thank you.

4 MR. PASQUALE: Thank you, Your Honor.

5 BY MR. PASQUALE:

6 Q Mr. Greaves, I'm looking at your declaration, just to  
7 be consistent. It's Exhibit A-1. Is that the application  
8 that you proposed to submit to the Bahamian Court?

9 A Mr. Pasquale, I apologize. In the bundle I've got the  
10 -- yes, I apologize. It is. I have it. A-1 is the  
11 application.

12 Q You do have it?

13 A Apologies.

14 Q Let me ask you to turn to page 27 of that application.

15 THE COURT: Okay. So, its not Joint Exhibit 8  
16 because there is no --

17 MR. PASQUALE: It is not, Your Honor.

18 THE COURT: Joint Exhibit 8 only has five pages.

19 MR. PASQUALE: Joint Exhibit 8 just has the  
20 summons.

21 THE COURT: Yeah.

22 THE WITNESS: So, I believe that was my confusion,  
23 Your Honor. Am I referring to page 27 of the affidavit  
24 supporting the summons?

25 MR. PASQUALE: Correct.

1 THE WITNESS: Thank you. I am almost there.

2 MR. PASQUALE: So, Your Honor, to be clear, I  
3 don't know if you have it in front of you its Exhibit A-2 is  
4 the fifth affidavit in support of application. Its Exhibit  
5 A-2 to Mr. Greaves declaration.

6 MR. GLUECKSTEIN: Your Honor, not to complicate  
7 matters further here, if I may, though, that document is  
8 attached to Mr. Greaves declaration. But that proposed  
9 affidavit is not in evidence at this hearing because it is of  
10 no evidentiary value and there is no dispute about that. So,  
11 I think that is why you only the summons which states the  
12 claims to be brought. That was moved into evidence this  
13 morning as part of the joint exhibit list, but that affidavit  
14 is not in evidence at this hearing that Mr. Pasquale is  
15 referring to now.

16 THE COURT: All right.

17 MR. PASQUALE: Thank you, Mr. Glueckstein.

18 THE COURT: I assume it's being used for  
19 impeachment purposes.

20 MR. PASQUALE: It is, Your Honor.

21 THE COURT: Okay.

22 MR. PASQUALE: I will try to ask a couple of  
23 questions. I am not seeking to put the document into  
24 evidence.

25 So, thank you, Mr. Glueckstein. Thank you, Your

1 Honor.

2 BY MR. PASQUALE:

3 Q So, I think we're together, Mr. Greaves, you're page  
4 27, Section 16?

5 A I am.

6 Q It says appointment of representative creditors?

7 A Yes.

8 Q Does that section propose various litigation to answer  
9 certain of the questions that you proposed to raise with the  
10 Bahamian Court?

11 A I will just read it again, if you don't mind, to  
12 myself.

13 Q Yes.

14 (Pause)

15 A Mr. Pasquale, I have read down to the end of 114. My  
16 understanding of this section is that its describing  
17 potential steps once the application is made to the Bahamian  
18 Court. And as has been established, I shouldn't talk to how  
19 proceedings run in the Bahamian Court. It is not my area of  
20 specialty, but I understand that its likely that such matters  
21 would be -- the Bahamian Court would be assisted in its  
22 understanding of these matters in giving directions by  
23 seeking to hear the position of creditors or customers. That  
24 is my understanding of this section.

25 Q And those creditors have not yet appeared in the



1 Bahamian case?

2 A Not in the sense that I understand it. I don't believe  
3 that creditors -- I can't be certain, but my recollection is  
4 that creditors have not appeared in the Bahamas case.

5 Q And you understand -- do you understand, Mr. Greaves,  
6 that my client, the official committee of unsecured  
7 creditors, and these debtors' Chapter 11 cases represent the  
8 interest of, among others, all of the customers of the  
9 international exchange?

10 A I do understand that to be the position of the UCC.

11 MR. PASQUALE: Thank you. No further questions,  
12 Your Honor.

13 THE COURT: All right. Thank you.

14 CROSS-EXAMINATION

15 BY MR. SABIN:

16 Q Good morning, Mr. Greaves.

17 A Good morning.

18 Q I am Jeff Sabin from Venerable LLP who represents a  
19 group of ad hoc international customers who filed a statement  
20 in partial support of your motion. I will be very brief. I  
21 have three questions.

22 First, do you believe it is within your duties to  
23 negotiate a protocol for other arrangements for the Bahamas  
24 Court and/or this Court to decide the non-US law customer  
25 issues as you define them in your draft application?

1 A My understanding or believe is that that would be a  
2 matter for the Courts, the Court or Courts. I could  
3 certainly imagine that that would require input from the  
4 JPLs.

5 Q If this Court were to decide to order or to suggest a  
6 procedure for a joint hearing of this Court and the Bahamas  
7 Court to adjudicate those non-US customer issues, would you  
8 be in favor?

9 A I would be guided by the Court that appointed me. But  
10 if I take the spirit of the question, I'm interested in  
11 finding the answers. So, I would like to make the  
12 application to the Bahamas Court. I don't think I then get  
13 to influence how the two Courts decide to work together.

14 Q Finally, would -- if that were to happen, a suggestion  
15 of a joint hearing, would that meet your duties as you  
16 understand it?

17 A If the Bahamas Court were able to confirm that  
18 (indiscernible) or satisfy the threshold for us to carry out  
19 our duties then we could live with that.

20 MR. SABIN: Thank you, sir.

21 THE COURT: Anyone else wish to cross before I go  
22 back for redirect?

23 (No verbal response)

24 THE COURT: Okay. Redirect.

25 MR. ZAKIA: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. ZAKIA:

3 Q Just briefly, Mr. Greaves. Mr. Glueckstein asked you  
4 some questions concerning a communication that the JPL's sent  
5 to the 2.3 million customers identified on the customer list.  
6 Could you just tell us what was the purpose of that  
7 communication?

8 A Yes. Simply to do our best with the tools we have  
9 available to satisfy the duty of identifying and contacting  
10 our creditors. It was the only list we had available at the  
11 time. As was mentioned, that the two letters that have gone  
12 so far explain the nature of our appointment, explained what  
13 we were not appointed over.

14 I am making it very clear of the existence of the 134  
15 debtor proceedings before this Court. And inviting those who  
16 may believe that their creditors of FTX Digital. I have had  
17 people reaching out to me -- you know, customers reaching out  
18 asserting that they are. So, the purpose was to invite them  
19 to log their basic contact details on our case website. I  
20 believe at the moments its main address and email. So, that  
21 was the purpose of the contact.

22 Q Are communications such as this unusual steps for you  
23 to take in your role as a liquidator?

24 A No. Its primary duty 101, if I was looking after an  
25 entity with four or five creditors, I might not put up a

1 website. In this case the evidence suggests that the number  
2 is far, far greater than that. So, reaching out  
3 electronically and having a basic claims website with  
4 information and frequently asked questions would be very  
5 normal.

6 Q Have the JPLs ever represented to anyone that they have  
7 any authority to act on behalf of the U.S. Chapter 11 debtor?

8 A I certainly have not and I am not aware that any of the  
9 JPL's have.

10 Q And in the communications that you sent to customers  
11 have you taken any steps to explain that you do not have  
12 authority to act and are not acting on behalf of any of the  
13 U.S. Chapter 11 debtors?

14 A Yes, we have. I believe that we have made that as  
15 clear as possible. And, where counterparties, creditors or  
16 even debtors have reached out to us it's clear or reasonably  
17 clear to me that they should be reaching out to the debtors.  
18 I have passed on the contact details and explained why I  
19 can't deal with their query.

20 Q Now shifting topics, Mr. Glueckstein asked you about  
21 the unrestricted cash position of the JPLs. Do you remember  
22 that?

23 A I remember, yes.

24 Q Okay. I think you told him that with regard to cash  
25 that wasn't held for the benefit of customers or arguably

1 held for the benefit of customers, your current balance was  
2 less than \$1 million?

3 A Yes. I don't know the exact number but I think that  
4 would be, you know, a few hundred thousand dollars left.

5 Q Will it be possible for the JPLs to take any steps to  
6 fund their efforts on behalf of the administration the  
7 provisional liquidation given that cash situation?

8 A Only with permission of the Bahamas Court.

9 Q And what would you need permission from the Bahamas  
10 Court to do in order to accomplish that?

11 A I can think of two scenarios. The order appointing us  
12 and the statutory duties and powers laid out in the act, in  
13 the Bahamas basically divides up powers that the JPLs have  
14 between those that they can carry out themselves and those  
15 for which they need leave, or sanction, or approval of the  
16 Court.

17 In that latter bucket I can think of -- within the  
18 power of the JPLs to make such an application would be to  
19 seek permission to borrow funds. That would be permissible  
20 with sanction of the Bahamas Court. And it would also be  
21 possible, to my mind, to make an application to the Bahamas  
22 Court for a determination on whether the funds thought  
23 possibly or likely to be held in trust for customers were,  
24 indeed, trust funds or, otherwise, were generally available  
25 to carry out the estate.

1 I would say that second one is a core plank of the  
2 application that we're actually making.

3 Q And if you were prevented from the automatic stay from  
4 making that application what, if any, consequences would  
5 there be for the joint provisional liquidation?

6 A You know, I am not going to stop trying to do my job  
7 and fielding inquiries, which we still receive, you know,  
8 hundreds each month. But in terms of substantially moving  
9 this forward we would not be able to carry out our duties and  
10 not be able to -- never mind complete the provisional  
11 liquidation, we wouldn't even be able to do our basic roles.

12 Q So, if you were to follow the course that Mr.  
13 Glueckstein suggested and not make any applications to the  
14 Bahamian Court while you litigate with the debtors for  
15 however long, what would be the impact on the JPLs cash  
16 position as that occurred?

17 A Well, we have already committed expenditure beyond the  
18 funds that we have. So, we would be in an impossible  
19 situation.

20 MR. ZAKIA: Thank you. Your Honor, no further  
21 questions.

22 THE COURT: Thank you. Thank you, Mr. Greaves.  
23 You may step down.

24 (Witness excused)

25 MR. ZAKIA: Your Honor, our next witness is our

1 foreign law expert, Metta MacMillan-Hughes KC. She submitted  
2 a declaration at Docket No. 1193. My understanding from the  
3 debtors is they do not intend to cross her; therefore, we  
4 were not going to do a direct. We would stand on the  
5 declaration. She is in Court and available to answer any  
6 questions that the Court or any other party may have. But,  
7 unless you have any questions I would just offer her  
8 declaration at this time.

9 THE COURT: Okay. Any objection?

10 UNIDENTIFIED SPEAKER 1: No objection, Your Honor.

11 UNIDENTIFIED SPEAKER 2: No objection, Your Honor.

12 THE COURT: The declaration is admitted without  
13 objection.

14 (Macmillan-Hughes KC declaration received into  
15 evidence)

16 THE COURT: I don't have any questions. Does  
17 anyone else wish to ask the witness any questions?

18 (No verbal response)

19 MR. ZAKIA: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. ZAKIA: So, that completes the evidentiary  
22 portion of the JPL's case. So, at this time we would rest.

23 THE COURT: Thank you.

24 MR. GLUECKSTEIN: Good morning, again, Your Honor.  
25 Brian Glueckstein of Sullivan & Cromwell for the debtors.

1           As Mr. Zakia previewed this morning, the debtors  
2 have one witness this morning and we would like to call Mr.  
3 Edward Mosley to the stand.

4           THE COURT: Mr. Mosley, please come forward, take  
5 the stand, and remain standing.

6           THE CLERK: Please raise your right hand. Please  
7 state your full name and spell your last name for the Court  
8 record, please.

9           MR. MOSLEY: Edgar William Mosley, II, M-O-S-L-E-  
10 Y.

11           EDGAR MOSLEY, II, DEBTOR WITNESS, SWORN

12           THE CLERK: You may be seated. Your Honor.

13           MR. GLUECKSTEIN: All right. Your Honor, may I  
14 approach the witness and hand him a copy of his declaration?

15           THE COURT: Yes.

16           MR. GLUECKSTEIN: Does Your Honor need a copy?

17           THE COURT: No -- well, were these included in the  
18 joint exhibits?

19           MR. GLUECKSTEIN: They were numbered, Your Honor.  
20 It's numbered as Joint Exhibit 39.

21           THE COURT: Okay. I have it. Thank you.

22                               DIRECT EXAMINATION

23 BY MR. GLUECKSTEIN:

24 Q       Good morning, Mr. Mosley.

25 A       Good morning.



1 Q Is the declaration that is in front marked as Joint  
2 Exhibit No. 39 the declaration that you submitted to this  
3 Court in connection with your testimony this morning?

4 A Yes, it is.

5 MR. GLUECKSTEIN: Your Honor, Mr. Mosley's  
6 declaration was filed at Docket 1411. And we would ask that  
7 it be moved into evidence.

8 THE COURT: Any objection?

9 UNIDENTIFIED SPEAKER: No objection.

10 THE COURT: It's admitted without objection.

11 (Mosley declaration received into evidence)

12 BY MR. GLUECKSTEIN:

13 Q Mr. Mosley, can you give the Court a brief background  
14 of your experience as a restructuring professional?

15 A Sure. I have over 20 years of experience doing  
16 restructurings, corporate side, mostly on the company side.  
17 Most of the time they're in Chapter 11 proceedings of some  
18 sort, but I do, do some out of Court. I have worked at  
19 Alvarez & Marsal since 2008. And in general, I do some of  
20 our larger more complex cases.

21 Q Can you please describe for the Court your current  
22 responsibilities at Alvarez & Marsal with respect to the  
23 Chapter 11 debtors?

24 A Sure. I oversee a team of professionals who I organize  
25 into various work streams. Those work streams are, you know,

1 wide. We do cash. So, part of the job there is to not only  
2 secure, but also to project cash balances for the various  
3 debtors. In addition, we have a crypto team who are charged  
4 with identifying and securing the crypto and digital assets  
5 of the estate. That is more complicated than it seems  
6 because, as part of the debtor's operations prepetition,  
7 there were balances held at third party exchanges. So, we  
8 are in the midst of trying to get all those digital assets  
9 back.

10 In addition, there is a claims process that I oversee  
11 where we are setting up a claims portal and working with the  
12 claims agent on a process of how we will take and use the  
13 information as part of the bar date for the claims of the  
14 various entities.

15 Another big work stream for us right now is that the  
16 plan formation structure and the financial analysis around  
17 various plan structures. There are -- we have a multitude of  
18 work streams, but those are the big ones that I think are  
19 relevant to the question.

20 Q And are you the lead professional at Alvarez & Marsal  
21 on all those work streams for the Chapter 11 debtors?

22 A Correct. I lead the entire team.

23 Q Mr. Mosley, if you could just briefly look at your  
24 declaration that is in front of you at Paragraph 20.

25 A I'm there.

1 Q You have a statement there with respect to that states:

2 "The debtors are not aware of any customers of FTX DM  
3 who are not also creditors of FTX Trading or other debtors."

4 Do you see that?

5 A I do.

6 Q And that is your testimony as set forth in your  
7 declaration at Paragraph 20, correct?

8 A Correct.

9 Q Mr. Mosley, could you please explain to the Court, in a  
10 bit more detail, what you are saying in that statement,  
11 intending in that statement?

12 A No problem. In the case of the international or .com  
13 exchange that set of customer claims is the one in question.  
14 The JPLs have said that some portion of that exchange is  
15 their customer with the remainder being with the debtors at  
16 FTX Trading.

17 In fulfilling our duties when we think about if one or  
18 more customers of the .com exchange were, indeed Digital  
19 Markets customers I don't think that the US debtors would be  
20 able to say that a migration of that customer did not allow  
21 that customer to make a claim with Trading. I say that  
22 because, you know, first and foremost, the terms of service,  
23 the counterparty is FTX Trading, which is the debtor.  
24 Further, I do believe that all of the customers have or will  
25 have the ability to make a fraud claim against the debtors.

1 That claim would go against FTX Trading.

2 I don't think that somehow migrating a customer to  
3 Digital Markets would absolve the debtors of that claim. So,  
4 thus, in my opinion, any claims brought by customers against  
5 Digital Markets those same customers would have a claim  
6 against our debtors.

7 Q Mr. Mosley, if you could turn to Paragraph 21 of your  
8 declaration.

9 A I'm there.

10 Q You discuss, in Paragraph 21, of your declaration  
11 prejudice to the debtors if the proceedings in the Bahamas  
12 Court were to proceed. Is that right?

13 A Yes.

14 Q What types of prejudices do you believe the debtors  
15 will suffer if the stay is lifted and the application is  
16 filed in the Bahamas Court?

17 A I think of the types of prejudices in, sort of, three  
18 buckets. There is the additional costs that would be  
19 incurred by the estate for having a duplicative litigation on  
20 the same topics. I think of the confusion to our claims  
21 process and our overall plan process that would occur. And  
22 the final would be a potential delay in our case. I think  
23 there is potential to have, you know, our process delayed in  
24 some way.

25 Q With respect to the cost aspect of the prejudice to the

1 debtors, can you elaborate some for the Court on what you  
2 mean in the types of increased costs you are contemplating?

3 A So, the process of having a litigation in the Bahamas  
4 on the same, sort of, issues that are in the adversarial  
5 proceedings would require or could require the debtors to get  
6 additional legal counsel down in the Bahamas and for whatever  
7 sort of local law and rules that are there.

8 All of the professionals that are currently in our case  
9 would need to come up to speed on what their duties are and  
10 how they will conduct themselves in those Bahamian  
11 proceedings. So, all of that additional work would need to  
12 happen. There would be duplicative cases. There would be  
13 more hearings that folks would have to travel for. Just in  
14 general there would be additional expert testimony required.

15 I don't know if the requirements there are different,  
16 but I am told that there are, you know, additional expert  
17 witnesses needed. That isn't just for the debtors. All of  
18 the stakeholders would need to be present; the UCC, the ad  
19 hoc committee, any other stakeholders could be required to go  
20 down there and make sure that their properly heard in that  
21 case.

22 Q You mentioned a creditor confusion as prejudice. Can  
23 you explain to the Court a little bit more about what you  
24 have in mind, in your opinion, with the creditor confusion?

25 A Some portion of the creditors that are involved in our

1 case will be confused as to which case they need to appear,  
2 place a claim in, participate in. Some may decide to appear  
3 in both, some may choose one or the other and may be  
4 incorrect at which one they need to be involved in.

5 Having two claims portals up at the same time for the  
6 same population of creditors, the ones in question being  
7 anyone in the .com exchange, of FTX.com, is clearly confusing  
8 for someone who is not doing this for a living. There will  
9 be a set of customers who have no problem with that, but I'm  
10 sure there is a set of customers who will be confused in some  
11 way.

12 Q With respect to -- I think the third thing you  
13 mentioned, Mr. Mosley, was potential for delay. What is, in  
14 your opinion, a potential delay caused by duplicative  
15 proceeding in the Bahamas?

16 A It's a potential. I'm not saying that it's a required  
17 delay, but there could be a delay in our plan process if we  
18 need to wait until the Bahamian Court hears the litigation on  
19 that issue and then would have to put it in front of Your  
20 Honor as well. Every delay, though, in this case is  
21 expensive. There are a lot of professionals involved and the  
22 longer the process takes, the more it costs. So, the debtors  
23 are very focused on trying to shorten the amount of time, any  
24 potential delay is one that we take seriously.

25 Q Mr. Mosley, looking, again, at Paragraph 21 of your

1 declaration there are some bullet points there including the  
2 first bullet point that has a description of attempts to  
3 cloud title with respect to assets. Can you give the Court  
4 an example of what you are referring to in that first bullet  
5 point in Paragraph 21 of your declaration?

6 A Certainly.

7 Q This 7.7 billion that's been referenced by the JPL in a  
8 few places, most notably in its interim report, in my opinion  
9 is misleading. I am not saying that the number is incorrect.  
10 I am saying it is choosing to only show one side of the  
11 ledger. In this case these are amounts transferred from  
12 Digital Markets to a debtor. It ignores the fact that there  
13 corresponding amounts from debtors to Digital Markets. Its  
14 just taking a gross number and not giving the reader the  
15 benefit of the net amount.

16 In fact, its my opinion that if you totaled up the  
17 customers amounts that were transferred out, the amounts to  
18 FTX Trading, and the amounts to Alameda, and you compared  
19 that to the amounts coming in to Digital Markets there was a  
20 net inflow into Digital Markets. But at the very least, the  
21 amounts sent out of the 7.7 billion are dwarfed by the  
22 amounts required for the customer withdrawals. The JPL  
23 purports are, you know, customers.

24 So amounts sent out to Alameda or Trading that were  
25 then sent onto customers I don't view that as amounts due to

1 Digital Markets. And in the interim report where this number  
2 sits, it sits in the receivable section. You know, it  
3 intimates that Digital Markets is owed \$7.7 billion from the  
4 debtors. I feel that is misleading. They have used that  
5 number in lots of places.

6 Once, again, I don't think that its incorrect. You  
7 know, I see those transfers. I think its incomplete and  
8 purposely incomplete. So, that is what I am talking about  
9 when I say clouding title to the assets. They are saying  
10 that somehow Digital Markets is entitled to the assets of the  
11 debtors.

12 MR. GLUECKSTEIN: Thank you, Mr. Mosley. No  
13 further questions.

14 THE COURT: Thank you. Anyone else want to  
15 question in support?

16 UNIDENTIFIED SPEAKER: No, Your Honor. Thank you.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. ZAKIA:

20 Q Mr. Mosley, good morning.

21 A Good morning.

22 Q My name is Jason Zakia. I am one of the lawyers from  
23 the JPLs. I am going to ask you a couple of questions if that  
24 is okay.

25 A Yes, sir.



1 Q So, first of all, I would like to talk to you about the  
2 terms of service that you referred to on your direct  
3 examination. There were various different terms of service  
4 posted to the FTX.com website at various times. Is that  
5 correct?

6 A Yes, sir.

7 Q So the first ones that we are aware of are what, I  
8 believe, you referred to as the 2019 terms of service?

9 A Yes, sir.

10 Q And when were those posted to the FTX.com website?

11 A In 2019.

12 Q And by whom were those terms of service posted to the  
13 FTX.com website?

14 A If you are saying who the counterparty is who posted  
15 it, I mean its FTX Trading. That is the counterparty. If you  
16 are asking whether or not its -- you know, who is the actual  
17 person who mechanically put it onto the website I don't know  
18 who it was.

19 Q Okay. So, if I understand correctly, someone acting on  
20 behalf of FTX, but the records of the company don't indicate  
21 which individual posted the 2019 terms of service to the 2019  
22 website -- sorry, to the FTX.com website in 2019, right?

23 A Correct. There is just a record of it being put onto  
24 the website.

25 Q And at the time that that happened the CEO of FTX was

1 Sam Bankman-Fried?

2 A Correct.

3 Q Okay. And other than the posting to the website the  
4 records of the company don't indicate any separate step or  
5 separate notice was given to customers of the 2019 terms of  
6 service, correct?

7 A Correct.

8 Q Now at some point the 2019 terms of service were  
9 replaced by later terms of service conveniently referred to  
10 as the 2020 terms of service, is that correct?

11 A Correct.

12 Q Okay. Those were posted to the FTX.com website in  
13 2020?

14 A Correct.

15 Q And the records of the company are not sufficient for  
16 you to be able to know which individual posted the 2020 terms  
17 of service to the FTX.com website, correct?

18 A Correct.

19 Q At the time that that happened in 2020 the CEO of FTX  
20 was Sam Bankman-Fried, right?

21 A Correct.

22 Q Now it's your understanding that when the 2020 terms of  
23 service were posted to the 2000 -- sorry, to the FTX.com  
24 website those terms of service replaced the 2019 terms of  
25 service?

1 A Yes.

2 Q And so the relationship between FTX and its customers  
3 was governed by the 2019 terms of service from the time that  
4 was posted until the 2020 terms of service were posted,  
5 right?

6 A I am not a lawyer, but, yes, from a business persons  
7 perspective, yes.

8 Q Okay. You talk about this in your declaration, right?

9 A Yes, sir.

10 Q And, in fact, in Paragraph 10 of your declaration you  
11 say the relationship between customers and FTX.com Trading  
12 platform were governed by the 2019 and 2020 terms of service,  
13 right?

14 A Correct. I think Paragraph 10 speaks for itself.

15 Q And you have described for us the process by which  
16 those two terms of service were posted to the website and  
17 disclosed to customers, right?

18 A Yes.

19 Q Now I would like to ask about the 2022 terms of  
20 service. Do you -- the 2022 terms of service are Joint  
21 Exhibit 11. You don't have a copy of that with you, sir, do  
22 you?

23 A No, I do not. I am familiar with the 2022 terms of  
24 service.

25 Q Okay. May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. ZAKIA:

3 Q Sir, I have handed you what's been marked and admitted  
4 as Joint Exhibit 11. Is that the 2022 terms of service?

5 A It appears to be, yes.

6 Q And these terms of service are dated May 13th, 2022 at  
7 the top of page 1?

8 A They are.

9 Q And is that the date on or about which these terms of  
10 service were posted to the FTX.com website?

11 A On or about, yes.

12 Q And am I correct that just like with the 2019, 2020  
13 terms of service the records of the company are not  
14 sufficient for you to be able to determine which individual  
15 posted those terms of service to the website?

16 A Correct.

17 Q And you address this in Paragraph 13 of your  
18 declaration, right?

19 A Yes. I am referring to Exhibit H, but that is the 2022  
20 terms of service and my declaration.

21 Q Correct. And what you say in Paragraph 13 of your  
22 declaration is in May of 2022 the records indicate that Mr.  
23 Bankman-Fried and/or others acting at his direction  
24 introduced new terms of service for the FTX.com customers by  
25 posting them to the FTX.com website. Do you see that?

1 A Yes.

2 Q Okay. And, again, I think you just told me you don't  
3 actually know which person at FTX posted these to the  
4 website?

5 A Yeah. I am referring to Mr. Bankman-Fried because he's  
6 the CEO of FTX.

7 Q Okay. So, the basis for your statement in Paragraph 13  
8 of your declaration with regard to the 2022 terms of service  
9 were that at the time Mr. Bankman-Fried was the CEO of FTX  
10 and so whoever did it must have been working, in your view,  
11 at his direction?

12 A I am saying that -- I am using Mr. Bankman-Fried in  
13 that sentence because in his capacity as CEO he was directing  
14 the operations of FTX. So, its his decision to put that on  
15 the website.

16 Q Okay. Just as he was the CEO directing the operations  
17 of FTX with respect to the 2019 and 2020 terms of service at  
18 the times that those were posted to the website?

19 A Correct.

20 Q And, in fact, sir, as far as the records of the company  
21 indicate and as far as you are aware about the process, the  
22 mechanical process by which the 2019, 2020 and 2022 terms of  
23 service were loaded to the website is the same?

24 A Mechanically I think its the same.

25 Q And with respect to the notice given to customers or

1 the lack of separate notice given to customers of the posting  
2 of the terms of service that's the same with regard to the  
3 2019, 2020, and 2022 terms of service, right? No difference?

4 A I don't know -- I think it's a legal determination what  
5 is required for --

6 Q Well, I wasn't asking you what was required. I was  
7 just asking whatever was given was the same for all three?

8 A Yeah, I wasn't finished. Sorry. I am not a lawyer, so  
9 I don't have the legal determination of what is required, but  
10 I think that mechanically the same notice was given for all  
11 three.

12 Q Now I would like to ask you a couple of questions about  
13 Joint Exhibit 11 which is the 2022 terms of service. I think  
14 you told us on your direct testimony that FTX Trading was the  
15 counterparty with the customers with respect to the terms of  
16 service. Did I hear you correctly?

17 A Yes. In Paragraph 1, FTX Trading is the counterparty  
18 to the customer.

19 Q And you are referring to Paragraph 1 of Joint Exhibit  
20 11 which says the following terms and condition of service,  
21 together with any documents, expressly incorporated herein  
22 constitute an agreement between you and FTX Trading, a  
23 company incorporated and registered in Antigua and Barbuda,  
24 or a service provider in respect of a specified service. Is  
25 that what you are referring to?

1 A Yes.

2 Q Okay. So, this is an agreement between customers and  
3 either FTX Trading or a service provider to the extent there  
4 are service providers that will be providing specified  
5 services, right?

6 A Correct. FTX Trading is the only name in that. I  
7 agree, it does say or service provider.

8 Q Right. And you are not a lawyer, and I'm not asking  
9 you for any legal opinions as to the legal impact of that,  
10 but that is what this provision says.

11 A Yes.

12 Q Okay. And if we look on the next page, Section 1.3 of  
13 the 2022 terms of service which is helpfully bolded with the  
14 words important, that provision says you acknowledge and  
15 agree that any specified service referred to in a service  
16 schedule shall be provided to you by the service provider  
17 specified in that service schedule. In such case the  
18 specified service shall be provided to you on and subject to  
19 the terms with reference in these general terms to FTX  
20 Trading being read as a reference to the service provider.  
21 Is that correct?

22 A That is what it says, yes.

23 Q Okay. And am I correct, sir, that in the service  
24 schedules, which are attached to the 2022 terms of service  
25 which are Joint Exhibit 11, FTX Digital Markets is a

1 specified service provider.

2 A They are one of the service providers, yes.

3 Q So, for example, if we look at Schedule 2, service  
4 schedule, which is the page 32 of 63 on the Court filed copy.  
5 Do you have that, sir?

6 A Yup.

7 Q FTX Digital Markets Ltd., is identified as a service  
8 provider in Schedule 2?

9 A I see that, yes.

10 Q Okay. And in Schedule 3, which is on the Court filed  
11 page 33 of 63, in that service schedule FTX Digital Markets  
12 is identified as a service provider, right?

13 A I see that, yes.

14 Q And if we look at Schedule 4, which is page 35 of 63,  
15 FTX Digital Markets is identified as a service provider. Do  
16 you see that?

17 A Yes.

18 Q And if we look at Schedule 5, which is -- well, they're  
19 all in order, so I'm sure you are following along. FTX  
20 Digital Markets Ltd., is identified as a service provider,  
21 right?

22 A Yes.

23 Q And if we look at Schedule 6 FTX Digital Markets is  
24 identified as a service provider?

25 A Correct.



1 Q And if we look at Schedule 7 FTX Digital Markets is  
2 identified as a service provider?

3 A I see that, yes.

4 Q Okay. So, at least, with respect to the 2022 terms of  
5 service with respect to the specified services identified by  
6 each of the -- sorry, with respect to the services addressed  
7 by each of the schedules that we just reviewed that provide  
8 that FTX Digital Markets will be the service provider these  
9 terms of service are an agreement between the customer and  
10 FTX Digital Markets, right?

11 A I don't -- that is a legal determination. I think that  
12 there is more that goes into it. I am not a lawyer though, so  
13 I can't really tell you what the legal determination is. I  
14 am happy to agree with you when you point to the document and  
15 say that Schedule 1 through 6 or 7 say Digital Markets, but I  
16 don't -- I think on our side of the house when we say who is  
17 the counterparty we have not made the legal determination  
18 that FTX Digital Markets is the counterparty of this  
19 agreement.

20 Q Fair enough. And you are not offering any legal  
21 opinion?

22 A No.

23 Q And I didn't mean to ask you for one.

24 Would it be fair to say that from your perspective that  
25 is a legal question that you would like to have the answer

1 to?

2 A That's a legal question for sure and the determination  
3 of that question effects a lot of parts of the case.

4 Q So, it's a question that some Court will need to  
5 answer?

6 A Yes, sir.

7 Q Okay. And if we look, last question about this  
8 exhibit, its Section 38.11 of Joint Exhibit 11 which Section  
9 38.11 of the document is on page 28 of 63.

10 A I see it.

11 Q Okay. The governing law of the 2022 terms of service  
12 is English law, correct?

13 A That is what it says, yes.

14 Q Now in your declaration, in Section B of your  
15 declaration, Paragraphs 14 through 18, you offer some  
16 testimony concerning the efforts by the securities commission  
17 of the Bahamas to secured digital assets at the time around  
18 the bankruptcy filing, right?

19 A Yes, sir.

20 Q I just want to be clear, sir, other then the fact that  
21 one of the JPLs, Mr. Brian Simms, was copied on one email  
22 which you refer to as Exhibit, I believe, L of your  
23 declaration you don't have any personal knowledge about what,  
24 if any, involvement the JPLs had or didn't have in anything  
25 that the securities commission did with regard to the

1   securing of the digital assets, right?

2   A       There is more than one, you know, set of  
3   communications, but as attachments to my declaration we only  
4   put the one in there. So, if you are referring to the  
5   attachments, I agree, there is only that one attachment.  
6   That is the one which Brian Simms was, you know, cc'd on the  
7   communication from -- the official communication from the  
8   commission to Mr. Sam Bankman-Fried.

9   Q       And you weren't -- you don't have any -- other than  
10   things that you have seen in documents, which the Court will  
11   consider whatever evidence was admitted, but other than that  
12   you don't have any personal knowledge of anything Mr. Simms  
13   or anybody did or didn't do with regard to the securing those  
14   digital assets, right?

15   A       Correct. I don't have any personal knowledge of it.

16   Q       I would like to talk to you a little bit about  
17   prejudice which is some of the testimony that you offered on  
18   direct examination in response to Mr. Glueckstein's  
19   questions. One of the things I think you said was the  
20   debtors were prejudiced by the decision of the JPLs to  
21   establish a claims portal?

22   A       So, what I said in my direct was what are the ways that  
23   the debtors could be prejudiced and then inside here there  
24   are examples of actions of the JPL that have already effected  
25   the debtors. One of those being the claims portal.

1 Q And the claims portal exists today, right?

2 A Yes, sir.

3 Q Okay. The filing of the application, which is the  
4 subject of this motion, isn't going to create or destroy the  
5 claims portal, right?

6 A I don't know what their plans are.

7 Q But it exists independent of the application which the  
8 JPLs are seeking, I believe, from the automatic stay with  
9 respect to it.

10 A Yeah. I don't know what they are going to do based on  
11 the decision in front of the Court today.

12 Q Okay. And with respect to -- well is it your  
13 understanding that part of the issue of this hearing is  
14 they're asking Judge Dorsey to order the debtors to -- sorry,  
15 order the JPLs to take down the claims portal?

16 A No. Today is just a lift of stay motion.

17 Q Okay. I am going to direct your attention to Joint  
18 Exhibit 54 and I will hand you a copy.

19 MR. ZAKIA: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. ZAKIA:

22 Q Joint Exhibit 54 is the communication which the JPLs  
23 sent to customers which you referred to on your direct  
24 examination, is that correct?

25 A Yeah. Give me one second, I'm looking for which

1 exhibit it is.

2 Q Sure. The exhibit number is on the bottom right hand  
3 corner.

4 A That is the joint exhibit number. I am looking for the  
5 exhibit to my --

6 Q Oh, okay.

7 A Okay.

8 Q If we turn, please, sir, to the second page of Joint  
9 Exhibit 54, interaction with the Chapter 11 proceedings this  
10 communication states the provisional liquidation process for  
11 FTX Digital is running independently of, but in parallel with  
12 the ongoing Chapter 11 proceedings in the US, customers of  
13 FTX.com who have submitted claims against the entities  
14 covered by the US Chapter 11 proceedings are not prevented  
15 from registering their details via FTX Digital claims portal  
16 and vice versa. Do you see that?

17 A I see that.

18 Q Now, one of the other areas of prejudice that I believe  
19 you identified during your direct examination was cost.

20 A Yes.

21 Q You haven't completed -- you haven't quantified any  
22 estimate of cost, of what it would cost the Chapter 11  
23 debtors to litigate the application in the Bahamas; have you?

24 A I'm referring to there are clearly a set of additional  
25 costs that all of the stakeholders inside of our Chapter 11

1 would incur to have duplicate process in the Bahamas. I  
2 don't usually put together professional fee forecasts for  
3 other professionals, but, you know, I put together many  
4 budgets on, you know, professional fees in various cases. So  
5 I have an understanding of the sort of quantum of those and  
6 what we would -- what would be the other impacted  
7 professionals that would have to go down there.

8         So, no, I haven't prepared a specific schedule, but  
9 I've got -- I have enough knowledge of how professional fee  
10 forecasts work to say it's a number.

11 Q       Okay, but my question is have you done anything to  
12 quantify what that number is?

13 A       Other than think through what the mechanics would be,  
14 no, I haven't put down on paper a forecast.

15 Q       Okay. And if you haven't quantified what that number  
16 is, I assume you haven't compared whatever that number is to  
17 the total amount of administrative expenses that have been  
18 incurred by estate professionals in the course of this  
19 Chapter 11 case?

20 A       For the purpose of me saying that it's prejudice is  
21 that it would be additional costs, from my process, for a  
22 duplicative set of, you know, matters that would need to be  
23 decided by a judge. So this would be on top of whatever I  
24 have in my forecast, so that's why I've said it's additional  
25 costs. I don't compare it to what the administrative burden

1 for the whole case is, I compare it to what would it be  
2 versus my base case, which is a Chapter 11. And so it's  
3 clearly on top of because it's the same matters in our  
4 adversarial proceeding being heard somewhere else in which I  
5 have to do additional things.

6 Q Could you just give me, what -- if you know, what are  
7 the total professional fees incurred by the debtors to date  
8 in connection with the Chapter 11 cases?

9 A I don't have that offhand. It's part of, you know, the  
10 record, though; all of the fee applications are on file, you  
11 could go and add those together.

12 Q Okay. It's fair to say, whatever the incremental costs  
13 of the Bahamian proceedings would be would be fairly small in  
14 comparison to the total amount of costs incurred by these  
15 estates for professionals so far?

16 A Any amounts that would be in addition would come right  
17 out of the creditors' pocket. So, maybe it's small in  
18 comparison to the total professional fees, but it clearly  
19 would mean something to the creditors.

20 Q And you don't have any experience in legal proceedings  
21 in the Bahamas; right?

22 A No, I've never appeared in the Bahamas.

23 Q And I think we established you're not a legal expert  
24 offering any legal opinions; right?

25 A I'm not a lawyer, no.

1 Q So you're certainly not offering any opinions  
2 concerning the Bahamian legal process?

3 A I am not.

4 Q And one of the things you talked about, which I assume  
5 is related to costs, is also delay?

6 A Yes, sir.

7 Q Okay. You don't have any basis to know or opine on how  
8 long the Bahamian court would take to dispose of the issues  
9 raised in the application; right?

10 A Yeah, I referenced potential delay, I don't know how  
11 long or if.

12 Q And you don't know how long it might take this Court to  
13 deal with any of the overlapping issues in the Chapter 11  
14 cases?

15 A Correct. It's required, so it's in -- it's built into  
16 our timeline.

17 Q Okay. And since you don't know how long it would take  
18 in the Bahamas and you don't know how long it would take in  
19 Delaware, I assume it's fair to say you are not in any  
20 position to compare the speed with which the two different  
21 courts could address these issues; right?

22 A I am not in a position to compare the speed between the  
23 two courts, no.

24 Q Okay. One of the things you addressed, sir, in  
25 paragraph 20 -- well, 24 of your declaration deals with an



1 April 27 letter from the bar counsel in the Bahamas to the  
2 debtors' Bahamian counsel. It's Exhibit N to your  
3 declaration and is Joint Exhibit 50. Is that correct?

4 A Exhibit N, yes.

5 Q Do you have a copy of that up there with you?

6 A No.

7 Q Okay.

8 MR. ZAKIA: May I approach, Your Honor?

9 THE COURT: Yes.

10 THE WITNESS: Thank you.

11 BY MR. ZAKIA:

12 Q So Joint Exhibit 50, which is Exhibit N to your  
13 declaration, who is Peter Maynard?

14 A Peter Maynard is an attorney at Bay & Devereaux  
15 Streets, I guess --

16 Q Okay. Is he --

17 A -- in the Bahamas.

18 Q Sorry, I didn't mean to interrupt.

19 A No, I'm done.

20 Q Is he the debtors' Bahamian counsel?

21 A Yes.

22 Q And Jason Maynard, is that a lawyer at Mr. Peter  
23 Maynard's firm who also represents the Chapter 11 debtors in  
24 the Bahamas?

25 A I think so.

1 Q Okay. And this letter was received by the Bahamian Bar  
2 -- sorry, by the debtors' Bahamian lawyers from the Bahamian  
3 Bar Association on April 27, 2023?

4 A Correct.

5 Q And it concerns the application to have Mr. David  
6 William Allison KC specially admitted to appear as counsel of  
7 record for the Chapter 11 debtors in the Bahamian  
8 proceedings; right?

9 A Correct, as sort of an expert in sort of King's Counsel  
10 type of thing, English law.

11 Q Right. And this application was to have him appear as  
12 a lawyer in the Bahamian proceedings?

13 A I'm not familiar with what exactly the application did  
14 or didn't require.

15 Q Okay. So you don't know what the application filed by  
16 the debtors asked for to which this was a response?

17 A All I know is that we were not allowed under that  
18 application to have Mr. David William Allison appear in the  
19 Bahamas for us for what we viewed as English law requirements  
20 that we needed and that this says that -- I'll let it speak  
21 for itself, this document.

22 Q Okay. So you knew that the Bahamian proceedings  
23 concerned issues of English law and Mr. William Allison is a  
24 lawyer based in the United Kingdom?

25 A I think so, yes.

1 Q Okay. And the debtors wanted him to appear in some  
2 capacity in the Bahamian proceedings?

3 A Correct.

4 Q And this is the response from the Bahamian with regard  
5 to that application; right?

6 A I think so, yes.

7 Q Okay. And it says, if we look at the bottom of the  
8 first paragraph, "I advised that a usual requirement for  
9 Special Calls is canvassing all other local King's Counsel to  
10 ascertain their expertise and availability to be retained for  
11 the necessary application."

12 Do you see that?

13 A I do.

14 Q Do you know what a special call is?

15 A I don't know, but it's capitalized here.

16 Q Okay. Do you know what the canvassing requirements are  
17 that are referred to here?

18 A I don't know what the canvassing requirements are, no.

19 Q Do you know whether the debtors complied with the  
20 canvassing requirements specified in this letter prior to  
21 making the application?

22 A All I know is that the council is not minded at this  
23 juncture to approve my firm's application for a special call.

24 Q Well, you also know that they invited you to provide  
25 dates of availability to appear to make oral representations

1 as to why he should be admitted? Do you know if the debtors  
2 ever took up the Bahamian bar's invitation to have that  
3 meeting?

4 A I don't know what's become of this or how far we've  
5 pushed it after this.

6 Q So you don't know whether -- so you don't know whether  
7 the debtors complied with the legal requirements to have Mr.  
8 Allison admitted, right, you don't know whether that happened  
9 one way or the other?

10 A Correct.

11 Q And you don't know whether they took up the commission  
12 on its invitation to meet to discuss the issue; right?

13 A Correct.

14 Q And, as of today, you don't know whether Mr. Allison  
15 has or has not been admitted as of today; right?

16 A Correct, I don't know that.

17 Q And, just to be clear, if -- well, let's look at your  
18 declaration.

19 You say in paragraph 23 that you understood that this  
20 application to be similar to a *pro hac vice* motion in the  
21 United States. What is a *pro hac vice* motion in the United  
22 States?

23 A It's just a request to appear in front of a court.

24 Q Do you know whether in the United States, in this  
25 Court, an English lawyer could file a *pro hac vice* motion to

1 appear as counsel of record for the Chapter 11 debtors?

2 A I'm not a lawyer, no, I don't know.

3 Q You don't know about that one way or the other; right?

4 A No, I don't know that.

5 Q Okay. Sir, you gave some testimony concerning whether  
6 the possibility that customers may or may not have migrated  
7 from FTX Trading to FTX Digital Markets; right?

8 A Please ask the question again.

9 Q Sure. Do you recall during your direct examination  
10 speaking that one of the issues that is in dispute in this  
11 case is whether customers may or may not have migrated from  
12 FTX Trading to FTX Digital Markets?

13 A Correct.

14 Q Okay. I want to be clear, you have not, in your  
15 capacity as the financial adviser for the debtors, undertaken  
16 any effort to search the business records of the debtors for  
17 documents that would speak to whether or not that occurred;  
18 right?

19 A No, we have not undertaken an effort to look for  
20 documents that may or may not point to completion of a  
21 migration plan.

22 Q Okay.

23 MR. ZAKIA: Can I have one second, Your Honor?

24 THE COURT: Sure.

25 MR. ZAKIA: Thank you. I have no further

1 questions.

2 THE COURT: Thank you.

3 Redirect?

4 MR. GLUECKSTEIN: I'm sorry, Your Honor, I didn't  
5 know if there was any other questioning of Mr. Mosley, but  
6 I'm happy to redirect.

7 REDIRECT EXAMINATION

8 BY MR. GLUECKSTEIN:

9 Q Mr. Mosley, Mr. Zakia showed you what's marked as Joint  
10 Exhibit 54, the letter from the Joint Provisional  
11 Liquidators. Do you still have that in front of you?

12 A I do.

13 Q Have you reviewed this document in its entirety prior  
14 to your testimony today?

15 A Yes.

16 Q In your opinion as a restructuring professional, would  
17 creditors receiving this type of letter cause confusion as to  
18 with whom they should lodge a claim?

19 MR. ZAKIA: Objection, speculation.

20 THE COURT: Sustained.

21 MR. GLUECKSTEIN: I'm asking for his opinion.

22 THE COURT: Sustained.

23 BY MR. GLUECKSTEIN:

24 Q Mr. Mosley, Mr. Zakia showed you Joint Exhibit 11,  
25 which was the 2022 terms of service. Do you still have that?

1 A I do.

2 Q Mr. Zakia took you through certain schedules annexed to  
3 the 2022 terms of service where FTX Digital Markets was  
4 referenced; do you recall that?

5 A I do.

6 Q Do you have an understanding as to whether custody of  
7 cash is a specified service under the 2022 terms of service?

8 A I don't think it's a separate service that's governed  
9 by one of the schedules. I think that's sort of core to the  
10 customer relationship and what we -- you know, what FTX is  
11 doing with its customers. So I think it's -- it definitely  
12 does not say that FTX Digital Markets is the service provider  
13 for cash custody, if that's the question.

14 Q It is. And how about with respect to custody of  
15 digital assets and cryptocurrency, are you aware of anything  
16 in that document that identifies that being a specified  
17 service or being provided by FTX Digital Markets?

18 A It does not say it's provided by FTX Digital Markets.

19 (Pause)

20 MR. GLUECKSTEIN: No further questions, Your  
21 Honor.

22 THE COURT: Thank you.

23 Thank you, Mr. Mosley, you may step down.

24 MR. ZAKIA: Your Honor, I'm sorry, could we have  
25 one second before you excuse the witness?

1 THE COURT: I don't allow recross.

2 MR. ZAKIA: Okay. Thank you, Your Honor.

3 THE COURT: You may step down.

4 Let's take a short recess here. We'll come back  
5 and we'll finish up. We'll try to plow through the rest of  
6 the day. So let's take a 15-minute recess, we'll come back  
7 at 11:15.

8 (Recess taken at 10:59 a.m.)

9 (Proceedings commenced at 11:17 a.m.)

10 THE COURT: Mr. Shore?

11 MR. SHORE: Good morning, Your Honor. Chris Shore  
12 from White and Case on behalf of the JPLs. There have been a  
13 lot of papers, exhibits, and testimony filed on this motion,  
14 so it's hard to know what the Court sees right now is the key  
15 issues to be addressed, so feel free to interrupt me and  
16 focus me. I'm happy to do so.

17 But I want to start by highlighting three  
18 overarching points.

19 THE COURT: Well, I do have -- here's my thinking  
20 at this point.

21 MR. SHORE: Um-hum.

22 THE COURT: From a practical standpoint, if I  
23 allow the JPLs to go to the Bahamas and proceed there, what  
24 could possibly happen? Because regardless of what the Bahama  
25 court does, I still have to make the same determination, and



1 I have to do it on my own.

2 MR. SHORE: Um-hum.

3 THE COURT: And the assets that we are talking  
4 about are all under the interim jurisdiction of this Court.  
5 So regardless of what Bahamas decides -- if they decide,  
6 yeah, it all goes to digital -- it doesn't go to digital  
7 until I say it goes to digital.

8 MR. SHORE: Um-hum.

9 THE COURT: So what are we gaining from a  
10 practical standpoint by allowing a proceeding to go forward  
11 in two different courts on the same exact issue?

12 MR. SHORE: Okay. And one -- this is why I wanted  
13 to emphasize this point on the narrow scope of the relief and  
14 what we're actually seeking because we're not seeking to have  
15 dual proceedings. We're not seeking you to -- to cede your  
16 jurisdiction to the other court with respect to any of these  
17 issues, unless you deem it appropriate to do so.

18 What we are asking today, and I -- the one thing  
19 that has to get done to start that process is to file the  
20 application in the Bahamas court. That leads to another  
21 process that will require this Court signing off on it and  
22 the Bahamas court signing off on it. It's either going to  
23 come in the form of, one, a consensual protocol by affected  
24 parties to say, we agree the following issues should be  
25 decided by the Bahamian court. The Bahamian court should

1 tell Mr. Greaves whether the cash he has on hand, of which he  
2 -- the Bahamas court has jurisdiction; not you because it's  
3 not property of the Debtors; it's property of the Bahamian  
4 court -- can proceed in the Bahamas.

5           The issue of whether or not the terms of service  
6 should be voided as a fraudulent conveyance will occur in  
7 this Court. We'll work out a consensual process, and Your  
8 Honor will either agree with it or not and say, okay, we get  
9 it; this goes here, this goes here, here are the procedures.  
10 That's one way of handling it.

11           Another way of handling it is just to have the two  
12 courts talk to each other, and that has happened in the past.  
13 We have a basket of issues. The parties can't seem to get  
14 out of their own way to discuss whether any of this should  
15 occur anywhere else, and we're going to tell you, I, the  
16 Chapter 11 court, am going to decide all issues relating to  
17 Chapter 5; I'm going to deal with all issues relating to the  
18 terms of service as they apply to the accounts of the  
19 Debtors, et cetera. We could do it that way.

20           We could do a hybrid where the parties get as far  
21 as possible along the lines of a protocol that allows these  
22 two courts to exercise their jurisdiction without running  
23 afoul of each other's stay and then come to the Court with a  
24 set of procedures and say, we can't decide these four issues;  
25 the Debtors take this position; the JPLs take this position;

1 the UCC takes that position; and it's going to need to be  
2 sorted out.

3 Or we get to a set of courts digging in. You say,  
4 I am going to handle all issues with respect to all cash  
5 around the world, and the Bahamian courts stand down, and the  
6 Bahamian court would in a normal setting where we've seen  
7 this happen between courts, say, what are you talking about?  
8 I'm going to tell my Debtor what to do, and we get into a  
9 jurisdictional mess. That's a bad day for everybody.

10 You heard these issues that are framed by the  
11 application. Is this property of an estate, or is -- are  
12 these assets held in trust? Were the customers who would  
13 have rights under U.S. law or Bahamian law with respect to  
14 those assets customers of a U.S. debtor or foreign debtor?  
15 They have to be resolved, and both courts have jurisdiction  
16 over it.

17 It's been no secret that if you allow us to do  
18 that -- just file the application, get the parties to talk;  
19 if the parties can't talk, the courts will sort it out,  
20 rather than go into a jurisdictional war. It gets -- it gets  
21 worked out. Our position is going to be the Bahamian court's  
22 the best court to deal with Bahamian law, English law,  
23 Barbudan law, Antigen law because it is -- that's all under  
24 the commonwealth, and this Court is best charged with dealing  
25 with the Chapter 5 issues. Or wait, are all these void,

1 right? Can they be avoided as a fraud?

2 Things like that can be sorted out, and we have  
3 never said this Court can't decide any issues. We've been  
4 sitting by the phone waiting for the Debtors to engage and  
5 say, there is, in fact, something that can go on in the  
6 Bahamian court, whereas their position has been zero can ever  
7 happen there.

8 THE COURT: Well, I'm not inclined to agree with  
9 you that this Court should be restricted to deciding the  
10 Chapter 5 issues.

11 MR. SHORE: No -- no, I did not mean that -- I did  
12 not mean to say that. I gave that as an example of -- we --  
13 we would certainly not argue that the Bahamian court should  
14 be the one addressing the application of Chapter 5. There  
15 are a number of issues that will have to get addressed.

16 THE COURT: All right. Yep.

17 MR. SHORE: And in fact --

18 THE COURT: No, but what I'm saying is --

19 MR. SHORE: Yep.

20 THE COURT: -- this Court has to decide whether or  
21 not these assets belong to this Debtor, or do they belong to  
22 the Bahamian Debtor?

23 MR. SHORE: Well, that issue involves a question  
24 of English law, as we've laid out in the papers, and this  
25 Court is authorized to abstain in favor of the Bahamian court

1 to have the Bahamian court resolve certain issues, and the  
2 Bahamian court is authorized to abstain and say Your Honor  
3 can do it. Or you're both authorized to say, we'll hold  
4 joint hearings, we'll hear all evidence together, and then we  
5 will decide amongst ourselves how the issues are going to be  
6 decided. But the fundamental starting point --

7 THE COURT: How does that work -- I know we did  
8 that in Nortel, and I was involved in the Nortel case, but  
9 what do we do -- I mean, a joint hearing and the Bahamian  
10 court and I disagree.

11 MR. SHORE: Um-hum.

12 THE COURT: So then what happens? Now I've got in  
13 rem jurisdiction over the assets --

14 MR. SHORE: Yeah.

15 THE COURT: -- so my decision controls.

16 MR. SHORE: Your decision would control with  
17 respect to the Debtor's property in the United States over  
18 which it has accounts, and your jurisdiction would not extend  
19 to what Mr. Greaves told you are the assets of DM, which are  
20 under DM's control, what are those accounts --

21 THE COURT: Those are limited. Very limited  
22 assets, yes.

23 MR. SHORE: But it's not -- it's -- it's not --  
24 well, I'm going to get to the practical implication of this,  
25 but at the end of the day, if you're going to disagree, and

1 we're going to lead to a jurisdictional squabble, which we're  
2 -- I think we should all work as hard as we can to avoid.  
3 That's not a good day for anybody. Wouldn't we rather deal  
4 with it upfront than do with Judge Peck did in Lehman, which  
5 is allow people to litigate these issues and then say, well,  
6 I'm just not recognizing what the English court said. Sorry.  
7 You wasted your time doing it. That -- that seems to me to  
8 be an inefficient process.

9 THE COURT: Well, that's what I'm trying to avoid,  
10 as well.

11 MR. SHORE: Right. So -- so it seems to me that  
12 starting out at the beginning saying, of course, there's  
13 issues that need to be dealt with the Bahamian court. Mr.  
14 Greaves can make an application to say, can I use the money  
15 that's on deposit on the basis it's not a trust asset? Why  
16 can't he do that?

17 The Debtors are saying, absolutely not. You are  
18 restricted to the -- on restricted cash right now, and you're  
19 going to litigate with me for a year or years over the  
20 adversary proceeding with a million dollars in cash.

21 THE COURT: Well, if the Bahamian court has  
22 interim jurisdiction over assets, then they're in the same  
23 position with regard to those assets that I am in regard to  
24 all the other assets.

25 MR. SHORE: Correct. But the Debtors aren't

1 agreeing to that. The Debtors are saying --

2 THE COURT: Well, I'll talk to the Debtors about  
3 it.

4 MR. SHORE: -- it is a stay violation for the  
5 Bahamian court to exercise its in rem jurisdiction to decide  
6 issues, and this is what the Debtors are really concerned  
7 about. We're going to go through the terms of service with  
8 the Bahamian court. Look, what -- what's going on here? It  
9 says here, this is this; this is this. And the Bahamian  
10 court's going to render a ruling under English law. The only  
11 -- normally, that would not be a problem, but I think the  
12 Debtors are reticent of, well, I -- I've appeared in that  
13 proceeding, and somebody's going to argue that's res judicata  
14 against me when we talk about it in my own case with respect  
15 to the ownership of the funds. We can solve that in a  
16 protocol. That can all be addressed to make sure that we're  
17 not running into that problem.

18 But you can't say I don't want the Bahamian court  
19 to issue any ruling with respect to what it believes English  
20 law means with respect to the cash that is in the Debtor's  
21 hands because that might affect my negotiating position in  
22 this case or might affect you. Well, it's not -- you're  
23 telling me loud and clear it's not going to affect you. At  
24 the end of the day, you're going to have to come to that  
25 decision, and it may be that the English court under English

1 law determines that they're not trust assets, and it may be  
2 that you determine under English law with the reference to  
3 experts and listening to the experts, you determine they are  
4 trust assets, the cash the Debtors have are trust assets.  
5 You can't --

6 THE COURT: Well, one of the benefits is under  
7 English law is it's written in English. So I can read it for  
8 myself and understand what it says as opposed to -- I've had  
9 cases involving laws of Mexico, where there's a dispute over  
10 what the translation of that law is. But I don't have that  
11 problem here.

12 MR. SHORE: It may -- it may be when we negotiate  
13 a protocol that that is the result that people come to. I do  
14 think, having been through it with Bahamian counsel, there  
15 are going to be some specific issues with respect to English  
16 trust law and whether the language in the document is  
17 sufficient to, under English law, confer trust obligations.  
18 There're going to be issues with respect to novation under  
19 English law and whether English common law provides for the  
20 terms of service, as you saw in the testimony today, to be  
21 novated such that the customers who access the portal with or  
22 without the pop-up became customers according to those terms.  
23 So I --

24 THE COURT: Those are all things I can decide  
25 under English law with the use of expert testimony. And I



1 can read the -- if there's case law, I can read the case law.  
2 If there's statutes, I can read the statutes. I can  
3 understand it.

4 MR. SHORE: I'm not saying you can't. I'm also  
5 saying that it may be that if what ends up happening is we  
6 run a proceeding in the Bahamas, and there's an evidentiary  
7 record created and there's a read decision created by the  
8 English or the Bahamian court applying English law, you might  
9 or might not find it persuasive. Nobody is asking you today  
10 to agree to cede any of your jurisdiction or supervisory  
11 powers over anything. The only thing we are asking you today  
12 is let us invoke the jurisdiction of the Bahamian court and  
13 give us some guidance as to what you want us to do with  
14 respect to a protocol. It can't be that Mr. Greaves is -- is  
15 limited to \$1 million in cash because he can't go talk to his  
16 own court about his own cash. Or he can't go out and seek to  
17 have customers file proofs of claim but based on a  
18 determination under English law from the perspective of the  
19 DM estate, these are or are not customer and creditors of  
20 your estate.

21 The second thing I want to highlight coming out at  
22 the beginning, is the notion that -- and I'm hearing a little  
23 -- in Your Honor's questioning here -- effectively, the  
24 Debtor's position -- and Your Honor's position is what your  
25 position is. But the Debtor's position as articulated in

1 their papers is that the only court that can ever touch these  
2 issues, issues of who the customers are, where they map to,  
3 and what is the obligation under the terms of service with  
4 respect to the cash on hand, can only ever be decided by this  
5 Court, and the Bahamian court should never be able to issue a  
6 decision, much less hold a hearing with respect to that issue  
7 without violating the stay.

8           And look, reading between the lines, 90 percent of  
9 the opposition to what we're doing here is based on a  
10 disappointment or regret of the existence of the Bahamian  
11 proceeding. And effectively ask this Court to ignore the  
12 fact that there is a proceeding with respect to a non-U.S.  
13 Debtor proceeding in a recognized foreign-made proceeding  
14 undertaken by recognized foreign representatives to determine  
15 issues.

16           And I think they're trying to tell you that FTX --  
17 and this has been their campaign, I think, since the  
18 beginning of the case -- FTX trading is a nullity. It was  
19 just put there to -- to engage in further fraud.

20           If they really wanted to treat the proceeding as a  
21 nullity, they shouldn't have consented to jurisdiction. We  
22 have an order that nobody's seeking to vacate or reargue that  
23 says that FTX DM is a debtor in a foreign-made proceeding  
24 being supervised by foreign representatives who are  
25 authorized to come into court, like I am today.

1           So wishing away the proceeding isn't an option  
2 here. We have to deal with the fact that there is a  
3 proceeding pending in another court with respect to a Debtor  
4 who is not under the general supervisory jurisdiction of this  
5 court but rather is sitting in its Chapter 15 capacity.

6           And for all the Debtor's rhetoric about this Court  
7 has an unflagging obligation to grab jurisdiction, protect  
8 its jurisdiction, assert precedent over all other courts on  
9 all other places, that's just not the law. This is not a --  
10 someone coming in and saying I've got a tort case pending in  
11 state court, and I want you to let me liquidate my claim  
12 there. This is three proceedings. An 11, a 15, and a  
13 Bahamian proceeding.

14           And there has to be a way to work out issues that  
15 can be decided in one case but necessarily might have effects  
16 or might not have effects in the other proceeding. And far  
17 from advocating the Debtor's box out at all cost, this is  
18 what the federal judiciary says about what's supposed to  
19 happen in Chapter 15. And I emphasize it because the Debtors  
20 have tried to write out entirely the notion of cooperation  
21 and the fact that we should, at all costs, be trying to avoid  
22 the loggerheads between two courts.

23           This is from the U.S. Courts Gov website,  
24 bankruptcy basics on Chapter 15. The purpose of Chapter 15  
25 and the model law on which it is based is to provide

1 effective mechanisms for dealing with insolvency cases  
2 involving debtors, assets, claimants, and other parties of  
3 interest involving more than one country.

4           This general purpose is realized through five  
5 objectives specified in the statute, and the first one is to  
6 promote cooperation between the United States courts and  
7 parties of interest and the courts and other competent  
8 authorities of foreign countries involved in cross-border  
9 insolvency cases.

10           There has to be some cooperation. And we're just  
11 not willing to accept the notion that where we should go here  
12 is what the Debtors are advocating, zero cooperation. You  
13 take jurisdiction over all issues, every -- any -- any other  
14 court that tries to exercise its jurisdiction over its own  
15 debtor takes a back seat, and if they do anything, it's a  
16 stay violation by the JPLs, anybody who argues the case, and  
17 by the court that issues the ruling in that case. That is  
18 not cooperation.

19           One final overarching point. There's a lot of  
20 insinuation and attack on the JPLs and how they've dealt with  
21 -- how they have dealt with what Mr. Ray has described as the  
22 dumpster fire. Unless the Court has questions, I don't  
23 intend to spend a lot of time defending the JPLs. They are  
24 not, as the papers insinuate, meddling kids seeking to  
25 interfere with some master plan.

1           As you saw with Mr. Greaves, they are experienced  
2 professionals trying to fulfill their fiduciary duties under  
3 difficult circumstances like the absence of definitive  
4 records and answers with clear instructions, and they're  
5 proceeding as recognized foreign representatives and  
6 recognized foreign-made proceeding.

7           Two, I'm not going to defend the fees that were  
8 spent anymore than ask the Debtors to defend their \$225  
9 million to date. This is an expensive process due to no  
10 fault of Mr. Ray or the JPLs. I'm not asking you to decide  
11 nor do you need to decide on this motion who's breaching the  
12 cooperation agreement, if anybody. That's an issue for  
13 another day. For today, the evidentiary record is clear and  
14 uncontested that, one, the JPLs repeatedly tried to engage  
15 the Debtors in good faith to discuss a protocol. And two,  
16 they gave the Debtors advanced notice of the filing, where  
17 they threatened a stay violation and then used that breathing  
18 space to file their own adversary proceeding.

19           The notion that the -- we should proceed with this  
20 proceeding because it's before you now is an issue that's  
21 going to have to be decides, among other things, as we  
22 pointed out in our motion to dismiss. It's a violation of  
23 the Chapter 15 stay on their part to -- to move forward with  
24 that adversary proceeding because that one is clearly seeking  
25 to avoid the digital's interest in assets in the United

1 States, the Moonstone Silver Date accounts.

2           So the -- the basis for saying we're not going to  
3 lift the stay, and we're going to proceed here because we  
4 have a first filed proceeding that has teed up the issue is  
5 one in dispute.

6           Finally, with respect to the Debtors' unclean  
7 hands argument, given Mr. Mosley's testimony on cross, it's  
8 hard to see how any actions by the JPLs to set up a claims  
9 portal or by the Bahamian court to ask that they re-file a  
10 pro hoc was -- was anything wrong, much less rose to the  
11 extent that -- that the JPLs have somehow forfeited their  
12 right to proceed on the lift stay motion.

13           On the contrary, I think the record is clear that  
14 the JPLs have assiduously complied with the stay, and I think  
15 it's clear that the Debtors are using it offensively here. I  
16 -- I don't see any explanation for the questions on how much  
17 -- the cash the JPLs have other than a -- a pointing out that  
18 the Debtors can use the stay here to strangle the JPLs' case.  
19 I mean, it's clear. I mean, I think the -- the point is, is  
20 that, just to be clear, we hold the -- the automatic stay.  
21 If the judge enforces it, you're not going to be able to even  
22 fight.

23           So onto the argument. In the papers, we defended  
24 our starting position that the stay does not apply to the  
25 filing of the application -- just the filing of the

1 application, the indication of the Court's jurisdiction  
2 without deciding what issues are going to be decided there or  
3 this Court, and what are the procedures on which they're  
4 going to be decided?

5 THE COURT: Well, what control do the JPLs have  
6 once the application is filed, and the Bahamian court says,  
7 well, this is what you've got to do? I want it -- I want to  
8 decide. Bahamian judge says, I want to decide whether or not  
9 these assets that are located in the United States belong to  
10 the Bahamian entity?

11 MR. SHORE: I -- I have not -- my motion has not  
12 sought leave for the Bahamian court to issue --

13 THE COURT: Well, I'm asking you what the Bahamian  
14 court could do on its own.

15 MR. SHORE: Well, the Bahamian court can do on its  
16 own what Your Honor can do on your own without calling up the  
17 Bahamian court with respect to the adversary proceeding. You  
18 don't have to call them up and say how am I going to decide  
19 this issue.

20 But what I'm advocating here is there needs to be  
21 a process set up. And if that means we have to go to the  
22 Bahamian court and say, we're filing the application, but for  
23 the next two weeks, we're going to try to -- or one week, or  
24 four days, going to try to hammer out a means of making sure  
25 that the courts aren't leading to conflicting results, and if

1 not, you're going to have to pick up the phone, and -- and  
2 talk to Chief Justice Winder (phonetic) and work it out, or -  
3 - otherwise we are going down this process with conflicting  
4 results.

5           And the Debtors, to be clear, the Debtors don't  
6 get this on prejudice. Debtors always have to go to the  
7 Bahamas court. There's no question. Even if they won the  
8 case, they convince Your Honor, based on evidence from  
9 competent witnesses that all of the customers stayed with  
10 digital. That -- that FTX DM was set up as a fraud, as a  
11 nullity, and everything about it should be voided. There's  
12 still property in the Bahamas in the form of the real  
13 property and the cash and crypto. Including the crypto being  
14 held by the Bahamian Securities Commission. They still have  
15 to go get that.

16           Setting up a process in which one court says I  
17 don't care what you think, I'm going to decide this issue,  
18 isn't going to foster comity on the other side to say, okay,  
19 well, I'll not return these assets. I don't -- so they're  
20 going to have to go there anyway. We should just get out in  
21 front of it and come up with a means of solving your problem.  
22 If we can't solve the problem, you're going to solve it  
23 because both courts have jurisdiction over their debtors and  
24 have to decide issues with respect to the terms of service,  
25 and the nature and extent of the interests and the cash. It



1 has to happen.

2           So -- but I -- leave aside that this stay doesn't  
3 apply. We're here. We did review the evidentiary record.  
4 Let me argue the -- why the stay should be lifted again just  
5 to allow the application to be filed and work out a  
6 cooperation agreement either consensually or nonconsensually  
7 with the courts.

8           There are three elements: prejudice to the JPLs,  
9 prejudice to the Debtors, and a determination that the  
10 dispute is not frivolous or useless. I'll take those in  
11 reverse order on the probability of prevailing on the merits.

12           I know the Debtors want to jump down the road on  
13 the merits of the underlying dispute, and Your Honor has  
14 heard something on the merits of the underlying dispute.  
15 Actually, that the issue is will it advance the process to  
16 allow the JPLs to invoke the jurisdiction of their courts,  
17 subject -- subject to the determination.

18           Nothing's going to happen in that proceeding  
19 that's going to affect the US Debtors without further order  
20 of this court. Just sets up the process. I think the  
21 Debtors should be directed, because they have an obligation  
22 both under the code and under the cooperation agreement, to  
23 negotiate that in good faith. I think they do have to show  
24 up to a meeting and say, okay, I'll consider this; I'll  
25 consider that. Not just fiat it in a different use of the

1 word fiat.

2 But that's -- that's where we need to get. And we  
3 have a -- Mr. Green's made it clear. He can file an  
4 application, Bahamas court can take the application, and then  
5 the two courts can start to communicate. Otherwise you're  
6 picking up the phone, talking to Chief Justice Winder, and  
7 he's saying I don't have anything in front of me. Same thing  
8 you would respond if the Debtors hadn't filed the adversary  
9 proceeding. We've got to tee it up in both courts.

10 But the record, with respect to the underlying  
11 merits, if really the issue to be addressed is, is -- is this  
12 a live dispute or is this just a waste of time. The record  
13 is clear on three points. One, this is a live dispute that's  
14 been around since Day 1. And is now framed by the Debtors in  
15 the adversary proceeding as a legit case or controversy.

16 In other words, they think the dispute is live  
17 enough over whose customers are whose and what are the  
18 interests in the cash being held by the respective Debtors is  
19 live enough to bring a declaratory judgment action before  
20 you.

21 Two, the 2022 terms of service exist just as they  
22 did in prior iterations as Mr. Mosley made clear. And they  
23 made clear. I don't need to walk you through the documents.  
24 They made clear that FTX Digital was in privity of contract  
25 with customers who used services. And the important

1 paragraph says where you read FTX Digital as applying to or  
2 you were talking about specific services with the service  
3 provider, cross out FTX trading and put in FTX Digital. That  
4 is a live dispute.

5 And then three, you heard from both Mr. Mosley and  
6 Mr. Greaves that the money flowed consistent with those  
7 terms. Mr. Greaves described it more fully in Paragraph 17  
8 of the declaration how \$13.4 billion of cash flowed through  
9 accounts in the name of FTX Digital. In other words,  
10 customers' money was held by FTX Digital in accounts owned by  
11 FTX Digital -- again, whether or not that was set up as a  
12 fraud and can all be avoided is an issue that's way down the  
13 line, and would have to be addressed in the context of --  
14 with respect to the Debtor's cause of action under Chapter 5  
15 to void all these things. That will proceed in the United  
16 States. Okay. I'm not going to argue otherwise. I don't  
17 think the Bahamian court has the ability to apply Chapter 5  
18 law and avoid the transaction. Okay?

19 But it has to -- as I keep saying, it has to be  
20 worked out. But this -- this is not what we're doing. The  
21 Court does not need to decide to determine -- to decide  
22 whether to lift the stay whether or not customers did or did  
23 not migrate. It's a question of whether the position that's  
24 been taken is frivolous or useless.

25 I want to point out one thing on the voiding of

1 all of this and the inconsistency the Debtors are taking.  
2 One of the provisions in the 2022 terms of service is 8.2.6.  
3 That's the provision that for the first time created the  
4 trust relationship between the party named FTX Digital -- or  
5 it's FTX trading, and the customers. When -- when the DOJ  
6 talks about the fraud, or -- or Mr. Ray (phonetic) testifies  
7 about the fraud -- he stole money, customer money. That's  
8 the 2022 terms of service.

9           So voiding that contract is something that a lot  
10 of people are going to have an interest in addressing. So  
11 we're going to have to deal with that in the context of the  
12 protocol.

13           Again, all this leads to, at the end of the day,  
14 either a consensual sorting of issues or a nonconsensual one  
15 imposed by the two courts that we're just trying to set up so  
16 that we don't litigate in multiple proceedings and then have  
17 the Bahamas court say, too bad, I'm not -- I'm not enforcing  
18 that in the Bahamas, or this court saying, too bad, I'm not  
19 enforcing this in the United States.

20           That seems to me to be the waste of time that can  
21 be solved if experienced professionals sit down with the  
22 model rules in this court and the -- and the precedents out  
23 there and say these are the issues that need to be done.  
24 Here are the participants. The committee should be entitled  
25 to intervene in the Bahamas proceeding. Okay. The Debtors

1 shall be able to make a new application for pro hoc vice for  
2 their lawyer to appear. Okay.

3 This has to be done in the Bahamas on the  
4 following schedule. This has to be done in the United States  
5 on the following schedule. Present it to you. Present it to  
6 Chief Justice Winder. Are you both okay with this?

7 If we're not -- right? If you, at the end of the  
8 day, say, under no circumstances am I letting the Bahamas --  
9 am I ever abstaining to the Bahamas on this issue, then at  
10 least we know now, as opposed to running down the road and  
11 litigating this issue only to have the Bahamas court say, I  
12 don't care what the US court says, or you say, I don't care  
13 what the Bahamas court says.

14 The prejudice to the -- the Debtors. I want to  
15 focus on the concept of legally cognizable prejudice. The  
16 Debtors may be insecure about having this court coordinate  
17 with the Bahamas court, but I don't understand the legally  
18 cognizable prejudice of having the two courts talk to each  
19 other. It's not -- Your Honor is not being asked to give up  
20 any jurisdiction, any supervisory power. You can have a  
21 conversation and say we've got to get to the bottom of this  
22 terms of service, who's whose customer, who's -- how are  
23 these funds being held. How are my funds -- my Debtor's  
24 funds being held; how are your Debtor's funds being held?  
25 We've got to get to the bottom of it.

1           We can do it as a joint proceeding; we can do it  
2 not as a joint proceeding. You decide it all; the Bahamas --  
3 the Bahamian court may say, you know what? I don't want to  
4 deal with any of these issues. You may say there's no chance  
5 I'm going to be determining whether or not Mr. Greaves under  
6 Bahamian law can spend money that is in the accounts.

7           I think there's going to be things where everybody  
8 is going to easily agree, and it may get difficult in the  
9 middle, but because it's difficult doesn't mean we should  
10 push it down the road and deal with it later, particularly in  
11 a case where costs are big.

12           So the -- the legally cognizable prejudice it --  
13 it just isn't there. All -- all of this about how the  
14 proceedings might play out, we can't appear in the Bahamas,  
15 the -- the committee can't have a creditor representative,  
16 all that should be worked out. And can be worked out in the  
17 context of a cross border protocol. No -- you're not being  
18 asked to decide those issues today. And with it -- with  
19 respect to the Debtors' notion wealth, the Bahamas is  
20 obviously, because the Bahamas doesn't have nuclear weapons,  
21 they're not entitled to the same deference we would give to  
22 France.

23           That's not -- first of all, that's just not the  
24 case. Chapter 15 applies to any Debtor. But more  
25 importantly, this Court has already recognized on a

1 consensual order the Bahamas proceeding as the foreign-made  
2 proceeding and the JPLs as authorized representatives in the  
3 United States. The issue of whether -- whether due process  
4 can be fulfilled there, or expenses can be controlled, or  
5 whether or not the -- anything can go on in the Bahamas at  
6 all is an answer -- is a question that's already been  
7 answered in a recognition order.

8           Finally, on prejudice to the JPLs; what happens if  
9 Mr. Greaves can't file the application? He can't invoke the  
10 jurisdiction of his court to get an answer. I've got cash  
11 sitting here, can I spend it? Or I've got an obligation --  
12 fiduciary obligation to determine who my customers are, track  
13 them down, and provide notice of my proceeding. What happens  
14 if he can't do that?

15           The testimony, I think is clear, from today and in  
16 his declaration. One, the JPLs are appointed by the Bahamas  
17 court with specific fiduciary and other duties, and specific  
18 powers. They are a creature of the court. Two, one duty is  
19 to seek directions where the estate needs resolution of legal  
20 issues affecting the assets or liabilities. Got an  
21 obligation to go to the court and seek instructions.

22           Three, there are issues facing the digital estate  
23 with respect to what is its property, what of that property  
24 is held in trust, and who are the customers who are entitled  
25 to share in the assets, either specifically their assets held

1 in trust or nonspecifically as a general creditor? And they  
2 can't, as the -- the questioning made clear, just ignore  
3 their duties. They can't close the case. I -- I get it.

4           The Debtors -- we -- we all woke up tomorrow, and  
5 the Debtors were faced with a situation, the SCB never acted.  
6 It never exercised its police powers to close down that  
7 business and start a provisional liquidation. And Mr. Ray  
8 had come in and had filed that entity here? Okay. That --  
9 that -- I guess that might be more efficient. It might not  
10 be more efficient. I don't know. But we can't wish it away.

11           They have specific obligations to go to their  
12 court, and the Debtors are saying they can't. The Debtors  
13 are putting them in a fiduciary trap and asking Your Honor to  
14 order that trap where they have obligations to fulfill, and  
15 they can't get comfort from their court that listening to the  
16 United States or listening to Mr. Dietderich is a fulfillment  
17 of their fiduciary duty. They can't just say, you know what?  
18 Let's just re-migrate all the customers back. They can't  
19 say, let's just send all our cash over. They can't say,  
20 let's just release all of our claims to -- for the return of  
21 the billions of dollars that flowed out of the digital  
22 accounts to the US accounts. They can't.

23           Practically speaking, in a proceeding that we  
24 can't wish away, there are processes that need to be filed,  
25 and I'll say it one last time. This Court recognized that



1 proceeding as the foreign main proceeding and legitimized the  
2 Bahamian court and the proceeding as a proper use of Chapter  
3 15.

4           So I -- I'm going to say this one last time, too.  
5 We are not, and have never asked the court, nor am I  
6 advocating now -- we didn't write it in the papers, we're not  
7 asking it -- for it in the order granting the stay -- asked  
8 to do anything other than lift the stay to allow the filing  
9 of the application subject to the term that nothing's  
10 happening with respect to the Debtor's property or the  
11 Debtor's rights without further order of this court. And  
12 quite frankly, I do think we need an order directing the  
13 Parties to work in good faith to take that first step.

14           No one's asking you to walk the whole staircase,  
15 and -- and move down this process. But I think it is a valid  
16 use and probably an important use of the US Debtor's assets  
17 right now, and the JPL's assets -- this isn't free -- to find  
18 out at the beginning, can we just avoid the position we --  
19 nobody wants to put a court in?

20           We don't want to put you in the position, we don't  
21 want to put the Bahamian court in the position of saying, you  
22 know what? I'm not buying into this. I am not ever going to  
23 enforce an order of the Bahamian court or the Bahamian court  
24 saying I'm never going to enforce an order of the United  
25 States court that says that FTX DM was void from the start.

1 So we got to make -- got to take the step. Parties should be  
2 asked to, on a near term basis, negotiate in good faith to  
3 get to that protocol, and if we can't decide it, to come back  
4 to Your Honor on some other basis and say, this is what we  
5 think the protocol should be.

6 And then we can address the issues of, well,  
7 that's not really right. I -- you're asking Judge Dorsey to  
8 give up his jurisdiction over an issue relating to the 2022  
9 service -- terms of service, Your Honor, we don't think you  
10 should do it. And you may say, I'm not approving that part  
11 of the protocol. I think where we get is we're going to have  
12 to have joint hearings on the terms of service and the  
13 migration.

14 THE COURT: Thank you.

15 MR. SABIN: Your Honor, Jeff Sabin from Venable,  
16 who is representing the ad hoc group, who issued a statement  
17 in partial support. I want to answer your two questions that  
18 are vexing you.

19 First, if it were to be quickly because our  
20 clients, like others here, are international customers who  
21 are worried about one thing, maximizing their recovery in as  
22 short a period of time as possible, if there were to be even  
23 perhaps before you were to make a decision here, a call with  
24 two judges, okay, who certainly everyone in this room  
25 respects for what they do, to talk to each other and say, you

1 know what, yes, we can have joint hearings. We can focus the  
2 issues. We can even decide amongst ourselves right now that,  
3 if we were to disagree, maybe we'll have a discussion on  
4 appointing a third who would be, effectively, the final  
5 arbiter of those issues.

6 Anything that we can do, pragmatically -- and I  
7 think you have the power to do this -- that's what we are  
8 otherwise pushing for, and we're pushing for it for all the  
9 reasons that all parties seem to say, which is we need to get  
10 to an understanding of the facts relevant to these key issues  
11 of law to move this case forward.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Does anyone else wish to speak in support of the  
15 motion?

16 MR. DIETDERICH: I can almost say good afternoon,  
17 Your Honor. Andy Dietderich of Sullivan & Cromwell for the  
18 debtors.

19 Your Honor, we're six months into these cases and  
20 the JPLs still do not accept the premise that the cases are  
21 really in Delaware. This is not a motion for court-to-court  
22 communication, it's not a motion for protocol, it's not a  
23 motion to ask you to call the Bahamas judge, it's a motion to  
24 transfer venue on the central issues of this case to another  
25 court. It's not a motion to dismiss the cases, but it is, if

1 granted, a motion to gut them, and we know this because  
2 that's what they wrote down.

3           The motion seeks an order from Your Honor granting  
4 permission to file the application. The application seeks a  
5 declaration from another court. The declaration is not  
6 advisory, it is not guidance; it is a binding declaration.

7           The other court is asked to decide if FTX Digital  
8 Markets owns all rights and obligations related to user  
9 accounts at ftx.com. The other court would decide if FTX  
10 Digital Markets owns all digital assets associated with  
11 ftx.com. The other court would decide the nature of customer  
12 rights against ftx.com.

13           The other court would decide if the JPLs are a  
14 trustee for customers, empowered to collect \$11 billion of  
15 missing customer entitlements. The other court would decide  
16 the scope of the powers of the JPL as trustee. The other  
17 court would decide how much property is in the trust that  
18 it's entrusted the JPLs with in response to the application.  
19 The other court would decide if the tracing rules by which  
20 the trustee would claw back assets from all of the debtors  
21 and from all of the non-debtors, and from any person to which  
22 the debtors have made any transfer.

23           This is the worst kind of slippery slope. An  
24 indication of its scope is the short statement filed by the  
25 JPLs themselves relating to the Voyager settlement.

1           So this was done March 7th, after our cooperation  
2 agreement. Voyager received a preferential payment, in our  
3 view, from Alameda. From Alameda, Your Honor, not from FTX  
4 Trading. We agreed a procedural stipulation and asked the  
5 Court and Judge Wiles to so order. The JPLs intervened with  
6 a short statement. It said that the JPLs may have an  
7 interest in the proceeds received by Voyager, and the JPLs  
8 reserved their right to claw that back into FTX DM.

9           I'd like to read what that statement says, if I  
10 may. This is on the docket, Docket 819. "The joint  
11 provisional liquidators expressly reserve the right to file  
12 and prosecute proofs of claim against the Voyager debtors,  
13 including claims related to payments made by any of the U.S.  
14 debtors to the Voyager debtors during the relevant preference  
15 periods with funds originating from the Digital estate."

16           And keep in mind they think, in the earlier  
17 paragraphs to this pleading, that the money came from Digital  
18 Markets and went to Alameda, so therefore they can chase the  
19 preference.

20           "The motion should not impact the rights of the  
21 joint provisional liquidators to seek to intervene in any  
22 mediation or litigation concerning the preference claims. In  
23 short, if there is to be global peace with the Voyager  
24 debtors, that peace cannot likely be reached solely in the  
25 United States."

1           What the JPLs are asking for is effectively,  
2 operationally, concurrent jurisdiction over all of the assets  
3 of our estate. Luckily, they can't have it, and they can't  
4 have it because of the global automatic stay.

5           The global automatic stay is why we filed in  
6 Delaware in the first place. This is one of the most complex  
7 insolvencies ever filed, it may be the most complex  
8 insolvency ever filed, but we have had one saving grace: we  
9 know who calls balls and strikes, we have centralized  
10 jurisdiction. If you take centralized jurisdiction away from  
11 us, in light of the complexity of what we face as a debtors'  
12 team, we will not be here for years, we may be here for  
13 decades.

14           So there are two questions before the Court: Does  
15 the stay apply? And, if the stay applies, has the movant  
16 shown cause to lift the stay to file the application?

17           Now, Your Honor, there can be no serious question,  
18 if you actually read the application, that the stay applies  
19 to it. The application seeks determination of ownership of  
20 property of the estate. If this were an action initiated in  
21 a Bahamas civil court by a creditor alleging the creditor  
22 owned all of the property of the debtor's estate, the action  
23 would be stayed, and there's no exception to the scope of the  
24 stay for a non-U.S. insolvency proceeding.

25           So the only real question before the Court is

1 whether the movant has carried its burden of showing cause to  
2 lift the stay and the heart of that test, as Your Honor  
3 knows, is evidence presented as to the balance of harms. We  
4 would submit, Your Honor, that there is in the record obvious  
5 evidence of substantial harm to the debtors, their estates,  
6 and their creditors if the core issues of this case are moved  
7 to the Bahamas.

8           Mr. Mosley testified about expense that cannot be  
9 dismissed. There would be new counsel, travel, additional  
10 hearings, not for some discrete contractual issue, but for  
11 all of the issues that I mentioned would be raised by the  
12 application, including the tracing of the assets and, if you  
13 read the filing they made in March, every single cause of  
14 action that we would bring on an outbound basis. Now, he may  
15 say today Section 5 is reserved for Your Honor, but that has  
16 not been their position to date.

17           And this is redundant. This expense is dead  
18 weight loss because the proceedings would be redundant. We  
19 would be back here litigating in front of Your Honor the same  
20 issues anyway.

21           Now, there was reference to the Chapter 15  
22 recognition order and I think this is very important. We  
23 consented to Chapter 15 recognition after initially  
24 contesting it and we did so because of one provision that we  
25 wrote in the recognition order. And this is in the

1 recognition order in the -- of course on the docket of the  
2 other case at 129. And it says in paragraph 9, "Nothing in  
3 this order, or any relief granted hereby, requires the court  
4 in the Chapter 11 cases to defer to any decision in the  
5 Bahamian liquidation proceeding with respect to or alters the  
6 court's *de novo* standard of review on any matter raised by  
7 the Chapter 11 debtors before the court in the Chapter 11  
8 cases with respect to property of the Chapter 11 debtors,  
9 including, without limitation, the scope of property of the  
10 estate or the application of the automatic stay."

11           We bargained for that because we expected that  
12 this would happen. We recognized the JPLs because they need  
13 representation in the United States to vindicate their  
14 rights, but we did not by doing so seed the primacy of the  
15 Chapter 11 to determine what is property of this estate and  
16 all of the rights that come with that. If there is something  
17 that is not property of our estate over which Digital Markets  
18 has custody, then there is a purpose for the Chapter 15 and  
19 we fully support that purpose. We also fully support the  
20 Chapter 15 to make sure that we know who can speak for the  
21 JPLs in federal court, but that's it.

22           So it is redundant because I can virtually assure  
23 you that if we were simply to allow litigation to proceed in  
24 the Bahamas and a result of that litigation were to come back  
25 here, I think it highly unlikely the debtors would support



1 that judgment. We might, we don't know what it says, but I  
2 think it's highly unlikely. And not only that, but not only  
3 we would have to support it, but every other stakeholder  
4 would have to support it because that language benefits not  
5 only us, it benefits all of our stakeholders as well. So the  
6 cost is incremental cost, there's no cost savings.

7 And, as I said, this is not just about us, this is  
8 about every party in the case that would need to go through  
9 the process that we ourselves have not yet completed to get a  
10 KC into the Bahamas court to represent us, everyone would  
11 have to go through that.

12 And, Your Honor, unlike a lot of the state cases,  
13 these aren't sunk costs. The Bahamian proceeding on these  
14 issues is not even at the starting line. We have no  
15 investment in the process there. Mr. Greaves testified he's  
16 not aware of a single creditor appearing in the Bahamian  
17 joint liquidation proceeding. Contrast that to what we've  
18 already accomplished in this case to date.

19 But -- but -- something not in the evidence is  
20 equally prejudicial and I want to speak to it as a lawyer  
21 because venue here is not simply about who decides, but it is  
22 about the law they use to decide the question. And we've  
23 been treating the law like it's a fixed thing, but the  
24 important principles of law are not fixed at all.

25 What is at issue? At issue is whether or not they

1 need to come to this Court and ask to establish, with the  
2 burden of proof on them under Section 362, that they have an  
3 interest in property of the estate. Congress gave the debtor  
4 the benefit of the burden of proof on that question and the  
5 first thing that might happen if that question leaves this  
6 Court is we lose the burden of proof, but that pales in  
7 comparison to the second issue, the question of constructive  
8 trust.

9           We've talked a lot about customer property  
10 interests. We've been working through the question of  
11 whether customers have a property interest in digital assets  
12 or fiat currency for months. It is a very, very advanced  
13 discussion with many different stakeholders. There's been  
14 two separate adversary proceedings filed in this court on  
15 that question and they're suspended to permit these  
16 discussions to continue.

17           Now, the question to customer property rights has  
18 two elements. The first is contractual, is there a user  
19 agreement or another contract that creates a trust or a  
20 bailment under contractual law? We have user agreements  
21 under U.S. law, Australian law, Cypriot law, Japanese law,  
22 Swiss law, and English law. We've looked at the question  
23 each. For ftx.com, the question is governed by English law.

24           And the question, the English law question is  
25 whether that contract creates an express trust. We believe

1 the question is straightforward and the answer, after our  
2 work, is no, but the matter is not before the Court. If it's  
3 ever litigated, and if the question is even clear enough to  
4 be litigated, we believe Your Honor will agree when you hear  
5 the evidence, and we clearly believe you're competent to do  
6 so, but that's not the interesting question.

7           The interesting question under virtually all of  
8 these arrangements is constructive trust and, as a Federal  
9 Court sitting in Delaware, Your Honor should apply Delaware  
10 conflict-of-law principles. Under Delaware law, constructive  
11 trust is a remedial doctrine and the law of the forum  
12 applies. This means that the substantive law of constructive  
13 trust to be applied to all of our creditors who are before  
14 you will be Delaware law for all customers and all creditors  
15 alleging a constructive trust or a similar equitable property  
16 interest.

17           The ad hoc group of customers, I think they're  
18 represented here today, pled it this way in the papers before  
19 the Court and we agree, there's an English law express trust  
20 question for ftx.com and there's a Delaware constructive  
21 trust question.

22           Now, the essence of constructive trust, of course,  
23 is unjust enrichment, and we're not talking about unjust  
24 enrichment of Sam Bankman-Fried, who will not see a penny  
25 from these cases. What we're talking about is potentially

1 unjust enrichment of one customer at the expense of another  
2 customer, or customers as a group at the expense of other  
3 creditors, or creditors as a group at the expense of other  
4 customers. And we are going to face these issues from,  
5 potentially, millions of people, or at least the  
6 representatives of millions of people, and it is essential to  
7 be fair to all creditors alleging a constructive trust that  
8 one set of rules apply and that everybody is treated fairly  
9 and equally. This is lost if we take one particular  
10 allegation of a constructive property interest and send it to  
11 the Bahamas because we lose the burden of proof selectively,  
12 which is supposed to benefit all of our creditors, and all of  
13 a sudden we have a constructive trust being alleged under law  
14 of a different forum than Your Honor's.

15           Now, this is important. If you look at docket --  
16 Joint Exhibit 7, this is also on the docket at 1193, this is  
17 the declaration of Metta MacMillan-Hughes, which was admitted  
18 into evidence by the JPLs without objection from us, and I  
19 just want to point to one quick provision, which is in  
20 paragraph 6. And in paragraph 6 she says, "In addition,  
21 certain regulatory and insolvency issues are governed by  
22 Bahamian law," blah, blah, blah, blah, blah, but then she  
23 says "trust issues are also likely to be governed by  
24 Bahamian, English, or Antiguan law."

25           I think that's probably true. If the case goes --

1 if venue goes to the Bahamas, those laws will govern trust,  
2 constructive as well; if they stay here, Delaware law will  
3 govern at least constructive trust.

4 And if that's not enough prejudice, Your Honor, I  
5 want to talk about the plan process, and here I have one  
6 single slide, if we can put that up.

7 The automatic stay exists for a purpose and the  
8 purpose is to allow us to prosecute a plan of reorganization.  
9 We have been called ambitious for this timeline, but we  
10 intend to try our best to deliver on it. This is the work  
11 ahead and we are well on our way.

12 On the left-hand side is where we generally are  
13 today. Our general bar date is June 30th. We've set the  
14 general bar date of June 30th because we have some visibility  
15 into customer claims and less visibility into non-customer  
16 entitlement claims, that bar date will give us that  
17 visibility.

18 We have undertaken publicly to have a draft plan  
19 of reorganization -- not the final, but a draft plan of  
20 reorganization filed publicly in July. We're in discussions,  
21 consensual plan discussions already with many stakeholders  
22 with respect to that plan of reorganization, including the  
23 committee.

24 We have a customer bar date, but importantly, near  
25 the end of this year we anticipate having an amended plan and

1 disclosure statement that reflects the benefit of these  
2 consensual plan discussions, resolve plan disputes, and  
3 confirm a plan in the second quarter of 2024.

4 THE COURT: Mr. Shore?

5 MR. SHORE: Your Honor, I have no objection to  
6 Counsel talking to you about a plan, but it's not part of the  
7 confirmation record -- I'm sorry, the lift-stay motion  
8 record. Mr. Mosley was here and could have testified to any  
9 of this, they chose not to do it that way, so I don't think  
10 it would -- he can, as I said, talk as he wants, but it  
11 shouldn't be part of the evidentiary record and we object to  
12 this.

13 THE COURT: Understood.

14 MR. SHORE: Okay.

15 THE COURT: Go ahead.

16 MR. DIETDERICH: The -- we also, Your Honor, have  
17 identified -- and this is important -- we have said in our  
18 pleadings that we do not require any relief from the Bahamas  
19 for the confirmation of our plan, and that is true, we do not  
20 need to go to the Bahamas. We would love to have a solution  
21 to the question of the property company in the Bahamas, which  
22 is a debtor, by the way. The only thing necessary for us to  
23 do to sell all of our real estate in the Bahamas and pay 100  
24 percent of the proceeds to customers and creditors is for the  
25 automatic stay to be respected with respect to that entity,

1 that's it.

2           Now, whether or not the automatic stay will be  
3 respected by the one creditor of the property company in the  
4 Bahamas, which is Digital Markets, I don't know, but the only  
5 thing that's necessary for us to sell the approximately \$250  
6 million of real estate we have in the Bahamas is for the stay  
7 to be respected so that we can do so because that company is  
8 a debtor. And the JPLs have a claim against the debtor, but  
9 it is an unsecured claim.

10           The only other property in the Bahamas of which  
11 we're aware is a very small amount of operating cash and a  
12 little bit of customer FBO cash. Would we like to include  
13 that and distribute that to customers? Absolutely, but our  
14 business judgment is that we would be nuts to link our estate  
15 and all of our value to the estate to a process that requires  
16 concurrent jurisdiction with the Bahamas simply because we're  
17 worried about a relatively modest amount of customer FBO  
18 cash.

19           We do need to decide if customers have a property  
20 interest, but we need Your Honor to decide that, we don't  
21 need the Bahamas court to decide it, and there's nothing in  
22 this confirmation plan that involves it.

23           The other important issue we have with Digital  
24 Markets is of course who owns the IP and the customer  
25 relationships and the goodwill of the business in case we'd

1 like to sell or recapitalize FTX 2.0 in connection with our  
2 plan of reorganization. Is that essential for confirmation?  
3 Probably not. Would we like to do it? Absolutely. Do we  
4 require any relief from the Bahamas to sell it free and  
5 clear? Under no circumstances.

6           So our answer to this conundrum, we would have a  
7 different approach, Your Honor, if we had \$5 billion here and  
8 \$5 billion there, or a different approach if we had not  
9 already concluded that we have all of the assets in REM and  
10 owe those assets to all of the customers. Our job is to get  
11 assets to customers and creditors as quickly and  
12 expeditiously as possible and we cannot, in our business  
13 judgment, decide the right way to do that is to invoke  
14 concurrent jurisdiction for no practical business purpose.

15           So, again, we would love to have a deal with  
16 Digital Markets with respect to what happens to their FBO  
17 creditors committee cash, which I understand to be less than  
18 a hundred million dollars, and we'd love to have a consensual  
19 resolution to the property in the Bahamas, but we do not need  
20 it to confirmation and we're not going to put ourselves in a  
21 position where we need it for confirmation.

22           Lastly, Your Honor, in terms of prejudice, this  
23 issue is not confined to Digital Markets in the Bahamas.  
24 Digital Markets is one of approximately 130 subsidiaries --  
25 about a hundred debtors, about 130 subsidiaries. If the stay



1 is lifted for one insolvency case, we can expect petitions to  
2 lift it for others. The Court could decide each motion when  
3 it's filed on its merits, but the precedent has been set, and  
4 in this case a precedent of global centralization is very,  
5 very important to the plan process that we want to conduct.

6 Okay, that's us. On the other side of the scales,  
7 prejudice to the JPLs. Well, there's virtually no evidence  
8 of this in the record. And Mr. Shore talked about legally  
9 cognizable prejudice; I want to focus on exactly that.

10 In some of the papers, there was a reference that  
11 the Bahamas proceeding might be quicker, so it could be  
12 cheaper. Well, again, I argue that it's entirely redundant,  
13 so any cost is incremental and any cost is a dead weight  
14 loss. But, if it's quicker, one has to ask ourselves, all  
15 right, well, if it's quicker, then that has a relationship to  
16 whether or not that proceeding will then be respected by Your  
17 Honor, ourselves, and the other stakeholders in this process.  
18 And I would submit that the alleged defects of slowness in a  
19 Federal Court process that gives notice and opportunity to be  
20 heard to everybody, as it must, is not legally cognizable  
21 harm in a Federal Court.

22 Familiarity with the issues has been mentioned,  
23 but, as I said, we see the English law issue as a very  
24 discrete issue. Your Honor has already done a cryptocurrency  
25 case, unlike many judges around the world. Your Honor is

1 familiar with the basic principles thanks to that case and  
2 this case and everything else. We would argue Your Honor is  
3 equally capable, if not more capable than the Bahamian judge  
4 to deciding an English law question. But, regardless,  
5 speculation about the relative familiarity sets of two judges  
6 is not cognizable prejudice that shows cause to lift the  
7 stay.

8           Mr. Greaves acknowledged today, acknowledged on  
9 the stand today, this Court can hear the issues that concern  
10 them, the Court is competent to hear the issues that concern  
11 them, and the issues raised in the application, what do they  
12 own and who are their creditors, are the same issues as what  
13 do we own and what are our creditors, and those are the same  
14 issues set forth in the adversary proceeding. So we are  
15 talking about a redundant proceeding.

16           The harm in the record -- and there was evidence  
17 of this harm -- the harm in the record is harm to the JPLs as  
18 fiduciary; they won't be able to comply with their fiduciary  
19 duties.

20           Now, I don't know if that's true or not. I would  
21 think that the JPLs could ask their court to give them  
22 comfort that they're not violating their fiduciary duties in  
23 a manner that creates some kind of liability regardless of  
24 what Your Honor decides. But, in any event, the JPLs are not  
25 here in a personal capacity. The JPLs are not here to say

1 there's harm to me. The JPLs are agents, not principals.  
2 They represent an estate, they represent creditors. For harm  
3 to be cognizable it can't be harm to the agent, it has to be  
4 harm to the principal.

5           There is nothing in the record, no evidence  
6 whatsoever of any harm to Digital Markets for litigating the  
7 question in front of you, only to the JPLs. There's no  
8 record of harm to any creditor of litigating the matter in  
9 front of you, because there can't be because, again, we have  
10 the assets and we can give them to all of the creditors  
11 immediately without bypassing through the Bahamas. Zero  
12 evidence. And I would submit that the fiduciary duties of  
13 the JPL may require them to come ask your Court to transfer  
14 venue to their court, but the fiduciary duties of the JPL do  
15 not require you to grant the relief.

16           Finally -- and this is I think important enough,  
17 even if it's not express, but there's several references to  
18 this throughout the JPL's papers, strongly implied. They  
19 contain many references to actions of the current Bahamian  
20 government, the Bahamian regulators, the DARE Act. And there  
21 is another interest here, the Bahamian government may have an  
22 interest in the outcome of these cases, an interest in having  
23 matters heard in the Bahamas. You know, there was mention of  
24 comity, interest in the regulatory structure, attracting new  
25 crypto investments, maybe even in being the host to FTX 2.0.

1 I don't know which way that cuts, Your Honor, but I do know,  
2 luckily, you don't need to consider those issues because  
3 they're not part of the standard for stay relief.

4           The Bahamian government is not here in front of  
5 the Court today. The Bahamian judiciary as judiciary is not  
6 in front of the Court today, the JPLs are and, as they have  
7 reminded us many times, the JPLs do not speak for the  
8 Bahamian government.

9           So the case law, very, very briefly. Putting it  
10 together, it is really a three-prong test, as Mr. Shore  
11 mentions, but with one important caveat. And if you look at  
12 a case, for example, DBSI, Judge Walsh phrased this very  
13 nicely, 407 B.R. 159 at 166, three prongs: Is there great  
14 prejudice to the estate if the litigation is allowed to  
15 continue?

16           Now, that's an interesting phrase itself because  
17 most of these cases are about something that's already been  
18 commenced. This, again, is here and not there, but I think  
19 we have put in sufficient evidence that there is indeed great  
20 harm if this case loses the benefit of the global automatic  
21 stay.

22           So the next prong is, does the movant -- is the  
23 hardship to the movant, sorry, consider -- does the hardship  
24 considerably outweigh the hardship to the debtors?  
25 Considerably outweigh. Is there considerably more hardship

1 to the JPLs in having to ask this Court to decide that they  
2 own property of our estate than being able to get selective  
3 treatment and go to the Bahamas and do the same thing? And I  
4 think, clearly, the evidence today has shown that there is  
5 not cause to lift the stay on that basis.

6           What's the probability of success on the merits?  
7 Well, for today, nobody knows. Now, we clearly believe that  
8 this argument is a difficult one for the JPLs to make  
9 because, as Mr. Mosley testified, there may be specified  
10 services provided by DM matching trades on an exchange, but  
11 custody of crypto, custody of cash were not specified  
12 services.

13           And so as Mr. Mosley said, and that reflects many  
14 conversations with that on the debtors' side, there's no way  
15 we could tell any customer, I'm sorry, all this value we have  
16 collected, not for you; you can go to the Bahamas. We're not  
17 in a position to do that for the simple fact that we were the  
18 custodian of all of the crypto and all of the digital assets.  
19 Our name is at the top of the agreement. Our name is at the  
20 top of the website. We own the website. We own the  
21 intellectual property and we are completely implicated by  
22 this. And so we decided as a debtor, that there's -- you  
23 know, we would love to get rid of some claims by sending them  
24 somewhere else, but it's just not fair to do.

25           But there's a fourth kind of quasi-problem and

1 Walsh mentions that in his opinion, and I think it's  
2 important; in fact, Mr. Shore mentioned it in an oblique way,  
3 as well, which is Walsh writes, Judge Walsh writes, "Courts  
4 also place emphasis on whether lifting the automatic stay  
5 will impede the orderly administration of the case." And  
6 here, it clearly will.

7           Your Honor, unless you have questions, Your Honor,  
8 I will just close by reiterating that we are confident as  
9 debtors that we can confirm a plan of reorganization for this  
10 case in the second quarter of 2024. No promise and no  
11 guarantees, but that is a path forward that we believe is  
12 viable, but only with the full protection of the global  
13 automatic stay. The Movants have not carried their burden to  
14 show cause for relief from the stay at this time and, Your  
15 Honor, respectfully, the motion should be denied.

16           THE COURT: One question to address Mr. Shore's  
17 argument about the fact that if we proceed here, the JPLs are  
18 going to be put at a disadvantage because they don't have  
19 access to cash to be able to pay their lawyers and the JPLs  
20 to represent their interests here.

21           How do I address that issue?

22           MR. DIETDERICH: Well, I think you have to ask the  
23 question. We have many people who would like to be paid  
24 their fees in this case to represent interests of various  
25 clients. I think the question would be, does a digital

1 markets estate, *in rem*, have access to properties sufficient  
2 to pay or, as they've said, I think the first implication  
3 they say if the stay were lifted kind of applies if it's not  
4 lifted, as well: Can they get litigation funding? And can  
5 they give, what we would call in the United States, a "DIP"?

6 I don't have any other solutions for that, because  
7 any other dollar that we pay them comes out of the creditors'  
8 pocket.

9 THE COURT: Well, he says you're objecting to them  
10 even being able to go to the Bahamian Court to ask for that  
11 relief, to ask for a DIP, to ask for some kind of access to  
12 the cash. That they do have *in rem* in the Bahamas.

13 MR. DIETDERICH: Well, Your Honor, if this were a  
14 completely different application, right, if the request were  
15 not to determine what's property of the estate, but to  
16 identify something that we agree is their property and then  
17 we're going to ask the Court to access it, then that could --  
18 we would obviously have no concern with that.

19 The problem is the only assets to which they  
20 pointed, the only assets -- and I -- (indiscernible) if they  
21 had something else -- they had operating cash, but it's been  
22 spent. The only other assets we're familiar that they have  
23 is the unsecured claim against the property company, which is  
24 the debtor, is the little bit of operating cash that they  
25 have and a little bit of crypto, and customer FBO cash.

1           And so if the request is, let us go to our  
2 Bahamian Court and ask to use customer FBO cash to pay the  
3 expenses of the JPL and they'd like to go to their court to  
4 ask that question, that does, in fairness, put us in a  
5 difficult spot, because those customers are our customers,  
6 and I may be an account in their name, but if it was received  
7 by them as, effectively, an agent on some combination of our  
8 behalf or the customer's behalf and having them spend that  
9 money on their own fees is, you know, as I said, will come  
10 directly dollar-for-dollar out of customer recoveries.

11           So, we're open-minded, and believe me, we have  
12 spent a lot of time negotiating for the JPLs. We don't mean  
13 to give them the stiff-arm. And we recognize we have the --  
14 we do have some Bahamian nexus to this case in terms of the  
15 FBO cash and the property company, and we're open-minded.

16           One of the things we have said to them, for  
17 example, is that we've had an arrangement where we could  
18 jointly monetize the property, recognizing that it was in the  
19 Bahamas, even though it's a debtor. We have yet been able to  
20 agree with them on a process that we believe passes  
21 Chapter 11 muster for making sure the property could be  
22 dispose of in a fair and transparent way to satisfy 363.

23           As soon as we're able to do that, we have told the  
24 JPLs that they can pay their expenses of monetizing the  
25 property out of the proceeds of the sale of the property, for



1 example. And there may be other solutions for other property  
2 in the Bahamas and we're always happy to talk to them about  
3 that.

4 But this application, the application before the  
5 Court today is not that question; it's something entirely  
6 different.

7 THE COURT: Okay. Thank you.

8 MR. PASQUALE: Good afternoon, Your Honor. Ken  
9 Pasquale from Paul Hastings for the Committee. I'm going to  
10 be very brief. Mr. Dietderich really hit many, many of the  
11 points that I was planning to comment on.

12 But let me start with the last, which was Your  
13 Honor's question, specifically, about the loan, but more  
14 broadly, about the Bahamian application, and I agree with  
15 what Mr. Dietderich just said. The JPLs can do what they  
16 need to do in the Bahamas, subject to the stay. That doesn't  
17 mean everything. They can take the assets they have, they  
18 can try to administer they're estate with those assets.

19 But when they ask, as they do in this motion, to  
20 raise and resolve issues that implicate property of the  
21 estate, that, they can't do. That violates the stay for all  
22 the reasons that you've heard today. And if there's any  
23 question about it, if you look at Joint Exhibit 8, that's the  
24 directions that they're asking for, and Mr. Dietderich hit on  
25 this, they're asking for determinations as to property of the

1 estate, but as Your Honor properly mentioned earlier, is this  
2 Court's jurisdiction. It almost is that simple on this  
3 application. And there is no other application before the  
4 Court as we stand here today.

5 For all of the talk from the JPLs' counsel,  
6 Mr. Shore, about, Well, we really just want a joint protocol.  
7 No, it's not the case. The application shows the contrary.

8 And what is really being sought here, and, again,  
9 Mr. Dietderich hit on all of these points, is litigation over  
10 property of these estates. What the Committee is most  
11 concerned about, Your Honor, and, frankly, your first  
12 question hit on it, is duplication of effort, lack of  
13 efficiency, and costs, because the costs of these efforts  
14 come out of the creditors. And when I say, "creditors" in  
15 the context of this dispute, we're talking about the  
16 customers of the international exchange and they're the same.  
17 It's the same people we're fighting about and there's no  
18 benefit to any of those customers from all of what's gone on  
19 here this morning.

20 This is a jurisdictional tug-of-war and there's no  
21 reason for it. We are here, the Committee, representing all  
22 of those creditors, those customers of the international  
23 exchange. The debtors, of course, are here. All the assets  
24 of the estates are here. And the JPLs are here, through  
25 their Chapter 15 process.

1           There is no reason for any of the issues raised by  
2 this application to be heard in the Bahamas, so we would ask  
3 that the motion be denied. Thank you, Your Honor.

4           THE COURT: Thank you.

5           Mr. Shore?

6           MR. SHORE: Three quick points, Your Honor.

7 Again, Chris Shore from White & Case, on behalf of the JPLs.

8           Let me start with what Mr. Pasquale just did about  
9 the customers. That's the "I wish they weren't there"  
10 argument. It would be -- this would be a lot easier for the  
11 customers if there weren't two courts and there was only one  
12 court with jurisdiction over issues.

13           I didn't create the problem. The JPLs didn't  
14 create the problem. There are two jurisdictions right now  
15 with worldwide jurisdiction over issues affecting their  
16 debtors' estates. So, to say this isn't helping the  
17 customers, I can't do anything about that. It's just the  
18 process that has been put in place that Mr. Greaves and the  
19 other JPLs are trying to exercise their duties on.

20           Second, I heard from both counsel, the slippery-  
21 slope argument of, Well, what they really want to do,  
22 Mr. Pasquale said, it's file and prosecute the action. We're  
23 not asking for that. And I heard Mr. Dietderich say, Well,  
24 if they had just come to us and said, We want access to this,  
25 that wouldn't have been a problem.

1           That's contrary to the evidence. The evidence was  
2 in the declarations and in the testimony that the JPLs said,  
3 Could we have a discussion about what can go forward in the  
4 Bahamas and what can go forward in the United States?

5           And the response was, No, we can't have a  
6 discussion about it. There is zero tolerance for having any  
7 issue decided in the Bahamas, and if you file anything there,  
8 it will be a willful violation of the stay.

9           So I'm just trying to find a way to allow that  
10 conversation to happen. And let's be clear about what this  
11 is. You keep referring to it, and you're right: *In rem*  
12 jurisdiction. The Bahamian Court has *in rem* jurisdiction  
13 over the following assets: the cash -- now, they keep saying  
14 it's just a modicum of cash. From our perspective, it leads  
15 to the second asset. The debtors, from our perspective,  
16 Trading, stole \$6.9 billion of customers funds and sent it to  
17 Alameda, who then frittered it away. But the Bankruptcy or  
18 the Bahamas Court has jurisdiction over that claim. It  
19 shares it with you. You both have worldwide jurisdiction  
20 over resolving that issue.

21           They have jurisdiction over the claim into  
22 properties. Those are all assets which are under control of  
23 the Bahamian Court.

24           This is what we want, ultimately --

25           UNIDENTIFIED SPEAKER: He's been talking --

1 THE COURT: Is there somebody on the line that we  
2 need to cut off?

3 THE CLERK: Yes.

4 THE COURT: Okay. Sorry about that.

5 MR. SHORE: If we file the application and we all  
6 have a discussion -- I like the newfound, good faith efforts  
7 of the debtors to say, Had they just asked us, we would have  
8 given them this. Have a discussion about that. What is the  
9 problem with us going in and asking for the Bahamian Court to  
10 determine whether or not the assets over which that Court has  
11 *in rem* jurisdiction, are held in trust, under the law of that  
12 forum?

13 The debtors' position, and I hope you heard the  
14 delay in Mr. Dietderich's voice in responding to your  
15 question on coming up with the right word. This is what  
16 they're worried about. The Bahamian Court looks at it and  
17 says, Under English law -- I'm looking at this -- these  
18 assets are held in trust. And I'm looking at this contract  
19 and these are your customers.

20 What they're worried is that somehow affects their  
21 estate. It affects their negotiating position. It affects  
22 their standing in front of this Court. That somehow this  
23 Court is just going to blindly say, Well, the English Court  
24 said that, so I'm going to do that.

25 That's -- Your Honor's clearly not going to be

1 doing that. But the mere fact that the debtors, the  
2 prejudice to the debtors is that there will have been a Court  
3 that spoke on the 2022 terms and service and said something  
4 about it, is not a basis for denying the JPLs from moving  
5 forward.

6 Now, we could fix it if we actually sat down and  
7 had a discussion over protocol. We could put in a provision  
8 in the order that says, Under no circumstances will any  
9 determination made by the Delaware -- by the Bahamas Court  
10 have any preclusive or any effect whatsoever in the United  
11 States without further order of this Court.

12 Okay. We could try to seal the proceedings so  
13 nobody knows what the English Court ruled. I don't know.

14 But the position that's been that with the  
15 debtors, contrary to their obligations under the cooperation  
16 agreement, is those conversations are dead. You are a  
17 deadweight loss. We don't want to deal with you. We wish we  
18 didn't have to deal with you. And now, you can't do anything  
19 in your case.

20 I'm just trying to avoid -- and I'm being clear --  
21 I'm trying to avoid you having to write an order that says,  
22 Nothing the Bahamas Court will have -- does, will have any  
23 effect in the United States without, first, having a  
24 conversation. Could we fix this somehow?

25 But there's zero prejudice to the debtors, legally

1 cognizable prejudice by having the JPLs go to their Court and  
2 say, You've got *in rem* cash. It is the FTX Digital's cash.  
3 I need some rulings about what I can do with that cash or I  
4 need some rulings as to whether you would consider these my  
5 customers or somebody else's customers.

6 Zero prejudice to the United States debtors if  
7 what we do is we put in a provision that says, Nothing that  
8 the Bahamas Court does in all of this, will have any effect  
9 in the United States. And if they don't want to appear,  
10 then, fine. I don't care. They don't have to appear there  
11 if that provision is in there.

12 But what I don't want, which is what they're  
13 actually doing, which is starving my estate so that they can  
14 do, through you enforcing the stay, what they weren't able to  
15 do in the normal processes, which is just wish it all away.

16 We're going to get to the litigation. If the  
17 debtors' defense in all of this is, this property was never  
18 held in trust under those terms of service because they  
19 weren't a service provider on the cash, we'd welcome that  
20 litigation. We'll get to it. We'll get to it in some court.

21 It's just a question of when we have to put  
22 everything on the Bahamas on hold to satisfy the debtors'  
23 concern that they really just articulated to you now: What  
24 is the prejudice by having them doing? Well, it's going to  
25 upset the plan process and it could possibly tell people that

1 our view of the contracts is wrong.

2           We could fix that. But what we can't do is have  
3 them use the stay as a sword to deprive us from doing  
4 anything on the idea that Your Honor is going to be  
5 instructing the JPLs how to treat the property over which you  
6 don't have jurisdiction and the customer relationships that  
7 they have over which you don't have jurisdiction.

8           So, we're just asking, lift the stay to allow us  
9 to file the application. We're not prosecuting it. And if  
10 what we're talking about is putting a provision in the order  
11 that says, And pending further order of the Court, the  
12 Bahamian Court shall not take any action. And if it takes  
13 any action, that action will be void.

14           That gives us the opportunity to have a discussion  
15 and decide these issues, rather than have the debtors in the  
16 evidentiary record say, I'm not talking about it under any  
17 circumstances, and then come up in front of Your Honor and  
18 try to say, Well, if we'd just discussed this, it all would  
19 have been worked out.

20           We can work it out. I'm not trying to tread on  
21 your jurisdiction. I'm not asking for your jurisdiction to  
22 be curtailed in any way, your supervisory powers to be  
23 curtailed in any way; I'm just trying to solve this issue  
24 without leading to a diplomatic event between the United  
25 States and the Bahamas over two courts saying, I'm not



1 listening to the other.

2 Thank you, Your Honor.

3 THE COURT: All right. Well, I'm going to think  
4 about this overnight. I'll give you my ruling tomorrow.

5 But I will tell you now that under no  
6 circumstances would I ever defer a core jurisdictional issue  
7 to a foreign court. And the core jurisdictional issue here  
8 is, whose assets are these? And they're assets over which I  
9 have *in rem* jurisdiction. And that's something that has to  
10 be decided here.

11 I understand the Bahamian Court may have  
12 concurrent jurisdiction, but as a practical matter, they  
13 don't have access to the assets. Only I have access to the  
14 assets.

15 So I'm going to ask the parties to talk this  
16 evening, see if there's any way to resolve the issue based on  
17 the arguments that I've heard about what the limitations are  
18 on what the JPLs are asking for, and I will think about how  
19 I'm going to ultimately rule and I will do that tomorrow at  
20 the hearing, okay.

21 COUNSEL: Thank you, Your Honor.

22 THE COURT: Do we want anything else to go forward  
23 today or do we want to -- we still have a little bit of time.  
24 Do we have enough time?

25 UNIDENTIFIED SPEAKER: May I have a minute, Your

1 Honor?

2 THE COURT: Sure.

3 (Pause)

4 MR. LANDIS: Your Honor, for the record, Adam  
5 Landis, on behalf of FTX Trading, Ltd. We'd like to try to  
6 get as far as we can on an evidentiary basis on the sealing  
7 motions if Your Honor is inclined to let us push through.

8 THE COURT: Let's go.

9 MR. LANDIS: Thank you.

10 THE COURT: All right.

11 MR. GLUECKSTEIN: Thank you, Your Honor. Again,  
12 for the record, Brian Glueckstein of Sullivan & Cromwell.

13 The next motion, as Mr. Landis indicated, is the  
14 joint motion of the debtors and the Committee for an order  
15 authorizing redaction of certain confidential information of  
16 customers and individuals.

17 We do have -- the parties jointly have two  
18 witnesses with respect to this motion: Mr. Cofsky, the  
19 debtors' investment banker who testified on these issues  
20 before the Court previously, and Mr. Sheridan.

21 We, as the debtors, would like to call Kevin  
22 Cofsky to the stand as the first witness.

23 THE COURT: All right. Mr. Cofsky?

24 UNIDENTIFIED SPEAKER: (Indiscernible.)

25 MR. WENDER: Sorry, Your Honor. For the record,

1 David Wender with Eversheds, counsel for the Ad Hoc  
2 Committee.

3 And because the motion seeks similar relief, I  
4 thought the understanding was, at least, we'd rely on the  
5 same evidence and present supplemental argument with respect  
6 to the Ad Hoc Committee's motion, as well.

7 MR. GLUECKSTEIN: Yeah. I'm sorry, Your Honor.

8 I mean, the Ad Hoc motion is obviously related and  
9 so, we did think it made sense to, at least have the Court  
10 consider the evidentiary basis and arguments together.

11 THE COURT: That's fine.

12 MR. WENDER: Thank you, Mr. Glueckstein.

13 MR. PASQUALE: Your Honor, if I may?

14 THE COURT: Yeah.

15 MR. PASQUALE: Ken Pasquale, again, from Paul  
16 Hastings, for the Committee.

17 One thing just so Your Honor is aware of how we  
18 planned to split responsibilities on the joint motion, is the  
19 debtors will be responsible for the 107(b) presentation and  
20 argument and the Committee will be handling the 107(c).

21 THE COURT: Okay. Thank you.

22 THE CLERK: Please raise your right hand.

23 Please state in full, your full name, and spell  
24 your last name for the court record, please.

25 MR. COFSKY: Kevin Michael Cofsky, C-o-f-s-k-y.

1 KEVIN M. COFSKY, DEBTORS' WITNESS, AFFIRMED

2 THE WITNESS: I do.

3 THE CLERK: You may be seated.

4 Your Honor?

5 DIRECT EXAMINATION

6 BY MR. GLUECKSTEIN:

7 Q Good afternoon, Mr. Cofsky.

8 A Good afternoon.

9 Q Mr. Cofsky, can you please provide the Court, as a  
10 reminder, with your background and experience. Please, if  
11 you would.

12 A Yes. I'm a partner at Perella Weinberg Partners. I  
13 was a graduate from The Wharton School in 1992. I was an  
14 analyst at Houlihan Lokey in the restructuring area for two  
15 years before I went to the University of Pennsylvania Law  
16 School and the University of Pennsylvania Fels Institute of  
17 Government.

18 I practiced law for several years, clerking, as well as  
19 a corporate lawyer, Cravath, Swaine & Moore, and then  
20 returned to banking and have been focused in the  
21 restructuring area since approximately 2001. And I've been a  
22 partner at Perella -- I've been at Perella since 2007 and  
23 I've been a partner since 2015.

24 Q Mr. Cofsky, can you please describe, briefly, for the  
25 Court, the scope of work that yourself and your colleagues at

1 Perella Weinberg Partners have been doing, pursuant to your  
2 retention in these Chapter 11 cases for the debtors.

3 A Yes, Perella Weinberg Partners is acting as an  
4 investment banker to the debtors in this matter. A  
5 number of wide-ranging areas, including the exploration of  
6 the monetization of various assets, as well as working with  
7 the other professionals and the management team and the Board  
8 and the other stakeholders to evaluate a potential plan of  
9 reorganization and the ultimate exit of the Chapter 11 cases.

10 Q Can you please describe, briefly, your experience in  
11 terms of monetization of businesses, including with respect  
12 to customer lists over the course of your career.

13 A Yes, I think we dealt with this in my prior testimony  
14 in my declaration. I have represented a number of companies  
15 and businesses with respect to 363 sales and plan of  
16 reorganization sales, a number of which involved customers.

17 And as I testified previously and was in my original  
18 declaration, my understanding and belief is that the  
19 customers have, in this case, material value to the estate.

20 The identities and the lists of those customers and the  
21 ability of other competitors to gain knowledge of those  
22 customers would be detrimental to the estate.

23 MS. SARKESSIAN: I'm sorry, can I ask the witness  
24 to speak up or maybe bring the microphone a little closer.

25 THE WITNESS: Yeah, I'm sorry. I can do that.

1 MS. SARKESSIAN: I'm just having a little trouble  
2 hearing you.

3 THE WITNESS: Is that better?

4 MS. SARKESSIAN: Yes. Oh, much better. Thank  
5 you.

6 BY MR. GLUECKSTEIN:

7 Q Mr. Cofsky, can you elaborate a bit and explain to the  
8 Court your view today, as you sit here today, as to whether  
9 you believe there's value in the FTX debtors' customer lists.

10 A I do. As I indicated earlier, part of the work that  
11 Perella Weinberg Partners is undertaking is an evaluation of  
12 the potential to monetize or reorganize the assets of the  
13 estate, including the exchange. The estate has approximately  
14 nine million customers and as we evaluate the potential for  
15 the treatment of that exchange going forward, we believe that  
16 the existing customer base is extraordinarily valuable and  
17 we -- our understanding is based on our research and having  
18 looked at the costs incurred by other crypto companies,  
19 specifically, to solicit customers.

20 We have also already engaged in a significant outreach  
21 process, with respect to solicitation of third-party  
22 interests in participating in a process to either acquire,  
23 invest into, or reorganize the FTX Exchange. And based on  
24 those conversations, again, it's our understanding that the  
25 existing customers are extremely valuable and valued by folks

1 who would be interested in investing into a reorganized  
2 business.

3 Q Mr. Cofsky, do you have a view on whether the debtors'  
4 customers lists are a potential source of value in a  
5 situation where the debtors reorganize versus sell the  
6 exchange?

7 A I think that the existing customers in that list is  
8 valuable in both contexts. To the extent the business would  
9 be reorganized, those customers would likely be very  
10 interested if they're going to own a portion or a significant  
11 portion of the reorganized business, they would be very  
12 interested in trading on that exchange to generate  
13 incremental equity value, enterprise value for their new  
14 holdings of that.

15 Similarly, if the estate monetizes or seeks an  
16 investment from third parties into the exchange, that same  
17 value would ultimately inure to the benefit of those  
18 customers.

19 Q Do you view the debtors' customers lists as potentially  
20 having value on an independent basis?

21 A I do. Again, as we have seen in --

22 MS. SARKESSIAN: Sorry, I'm going to object, just  
23 because I don't understand what "independent basis" means.

24 MR. GLUECKSTEIN: I'm happy to restate the  
25 question.

1 BY MR. GLUECKSTEIN:

2 Q Mr. Cofsky, do you have a view as to whether you might  
3 be able, as the debtors' investment banker, to monetize the  
4 customer list itself and create value for the estate?

5 A Yes. So, I understand the question to be, you've asked  
6 me if I think that the identities of the customers and the  
7 customer lists would be valuable to the business if it's  
8 reorganized and the business by third parties if it is sold  
9 or otherwise seeks a third-party investment.

10 I take this question to mean, would the list be  
11 valuable if we were unable to sell or chose not to sell  
12 and/or were unable or chose not to reorganize, but simply to  
13 sell the customer lists. And I do believe that would be  
14 valuable and the basis for that belief is the conversations  
15 we've had initially with third parties.

16 Q You testified on these issues before this Court back in  
17 January, with respect to the same questions around sealing  
18 the customer lists; do you recall that?

19 A I recall that, yes.

20 Q And do you recall, at the time, back in January, you  
21 offered testimony to the Court around the question of whether  
22 disclosure of the customer lists would jeopardize the  
23 debtors' ability to maximize value; do you recall that?

24 A I do.

25 Q As you sit here today, do you have a view today as to



1 whether the immediate disclosure of the debtors' customer  
2 lists would jeopardize the debtors' ability to maximize  
3 value?

4 A I do. I believe that releasing that information --  
5 that information is valuable, as I said, and I think  
6 releasing that information would impair the debtors' ability  
7 to maximize the value that it currently possesses.

8 Q Mr. Cofsky, could you please provide information for  
9 the Court as to what you and your team have been doing since  
10 January in order to try to begin to realize the value from  
11 the customer lists.

12 A Yes, as I indicated, we have spent considerable time  
13 working with the debtors' other professionals, the UCC  
14 professionals to evaluate the potential for a reorganization  
15 of the exchange, the core exchange, as well as the potential  
16 to seek third-party investment into that or to sell that  
17 exchange.

18 And as I indicated, we have reached out to a  
19 significant number of third parties and have begun the  
20 process of discussions with respect to that evaluation  
21 process with those third parties.

22 Q And can you just clarify, when you say the "core  
23 exchange," what you're referring to there.

24 A The international exchange, although, we have also  
25 evaluated the U.S. exchange and the potential for that to be

1 reorganized or not.

2 Q In your view, is there still work remaining to be done,  
3 with respect to realizing the future, if any, of the FTX.com  
4 Exchange?

5 A Yes. There is still significant work to be done. As I  
6 indicated, we have been working hard to evaluate and seek to  
7 implement the potential to reorganize that exchange, but  
8 there's a lot of work that would need to be done in order to  
9 accomplish that; in addition, as I indicated earlier, we have  
10 begun the process of discussions with third parties, but  
11 we're in the early stages of that process and that will take  
12 some time.

13 Q As you sit here today, do you have any sense as to,  
14 generally, how long it might take to complete that process?

15 A The process may -- it's a great question. I don't have  
16 specificity for you. The process is uncertain, insofar as  
17 we're relying on third-party participation to understand the  
18 interest in acquiring or investing into the rehabilitation of  
19 that core exchange.

20 We are also, potentially, going to implement that  
21 reorganization through a 363 sale or through a plan of  
22 reorganization. So in many ways, the ultimate outcome may be  
23 tied to the outcome of this case and it's difficult to  
24 determine with specificity exactly when that might be.

25 Q What is your view with respect to your ongoing process

1 from the immediate disclosure of the debtors' customer lists,  
2 if any?

3 A Can you repeat that question, please?

4 Q Sure, let me rephrase the question.

5 Do you have a view as to whether your current process  
6 would be impacted by the immediate disclosure of the debtors'  
7 customer lists?

8 A Yes, I think it would be negatively impacted,  
9 potentially significantly.

10 Q Mr. Cofsky, in connection with your ongoing analysis,  
11 has your -- have you and your team formed a view as to  
12 whether competitors would be able to locate and contact the  
13 debtors' customers, if only their names were publicly  
14 disclosed?

15 A We have. I testified briefly on this -- excuse me --  
16 in my last testimony.

17 We've gone out and we've looked at the top-200  
18 customers to validate what I had testified, with respect to a  
19 smaller number of customers. And with that --

20 MS. SARKESSIAN: I'm going to object. Based on  
21 his prior testimony, I understand this was not personally  
22 done by the witness, so maybe he could clarify to what extent  
23 he did this work personally.

24 THE COURT: Do you want to establish a foundation.

25 BY MR. GLUECKSTEIN:

1 Q Mr. Cofsky, okay, let's back up a half step.

2 Can you describe your development in the work that  
3 you're beginning to talk about with respect to the analysis  
4 of customer names in preparation of your testimony.

5 A Yes. I personally looked at the spreadsheet that  
6 included all of the names and I directed my team to do the  
7 research to determine the extent to which they would be able  
8 to identify customers on that list, based solely on the  
9 customer names. And I discussed -- it was an iterative  
10 process and we talked about the methodology to do that. And  
11 we talked about what information was located and whether that  
12 ultimately could be deemed to be an identification or a  
13 highly likely identification or something else.

14 Q Did you --

15 MS. SARKESSIAN: I would object to any testimony,  
16 based on what any other person told this witness and not what  
17 he, himself -- if he did the research, it sounds like he did  
18 not. So I object to any testimony that's based upon  
19 information that was given to him by another person.

20 MR. GLUECKSTEIN: Your Honor, I believe Mr. Cofsky  
21 should be able to testify with respect to work that was done  
22 at his direction, that he was involved with and reviewed as  
23 far as the outputs of, and he's prepared to testify about.

24 THE COURT: I'll overrule the objection.

25 MR. GLUECKSTEIN: Thank you, Your Honor.

1 BY MR. GLUECKSTEIN:

2 Q So, Mr. Cofsky, you were talking, you said in  
3 furtherance to the discussion that in the testimony you  
4 provided in January, you, subsequent to that, commissioned  
5 and participated in an analysis of the debtors' top-200  
6 customers, correct?

7 A That's correct.

8 I'm sorry, would you mind if I get some water, please?

9 Q Oh, sure. Sure. Hold on one moment.

10 (Pause)

11 THE COURT: I never saw such a flurry of activity.

12 (Laughter)

13 MR. GLUECKSTEIN: There's a lot of people standing  
14 at their ready to assist.

15 (Pause)

16 MS. SARKESSIAN: Can I have the question repeated,  
17 because I didn't hear how many customers it was.

18 BY MR. GLUECKSTEIN:

19 Q Mr. Cofsky, you could please explain for the Court the  
20 scope of the analysis that you commissioned with your team on  
21 the topic of whether revelation of customer names would be  
22 enough for competitors to locate those customers.

23 A Yes, we looked at the top-200 customers, which I  
24 recognize is a subset of the nine million potential  
25 customers. Based on the dollar amount of the claims at

1 petition date, that would represent approximately 2.4 billion  
2 of claims, which we thought was a reasonable set of customer  
3 names to review.

4 Q And can you describe for the Court both, the analysis  
5 that you did and the findings of that analysis.

6 A Yes, we did an analysis by looking through Google, but  
7 looking through LinkedIn, and by looking through Twitter  
8 feeds. This is not our core area of expertise. I actually  
9 believe that a well-funded and persistent party might be able  
10 to gain more confidence, but we wanted to be reasonable with  
11 our time.

12 And the results were, we thought, were compelling. And  
13 the results were that with respect to -- we looked at this  
14 from a -- I can describe it on a percentage basis, as well as  
15 a dollar number of claims, but the percent of the 200  
16 customers that we were able to identify purely on the basis  
17 of names, that was approximately 46 percent. 34 percent of  
18 those we deemed to be highly likely that we had identified  
19 them. The additional 12 percent, we viewed as likely, but  
20 not 100-percent certain.

21 On a dollar basis, we were able to locate in excess of  
22 a billion dollars of those claims, which represented, I  
23 believe, 30 -- I'm sorry, 42 percent of the 200, the total of  
24 \$2.4 billion. That's the greater than a billion dollars of  
25 located claims.

1 Q Mr. Cofsky, the debtors also have customers on their  
2 customer lists who, as of the petition date, had a zero-  
3 dollar balance, correct?

4 A Yes.

5 Q Do you have a view as to whether customers who had a  
6 zero-dollar balance on the petition date, would still be  
7 valuable names, if publicly revealed?

8 A Yes, I do. Our analysis did not go back to determine  
9 the extent to which those customers withdrew significant  
10 funds prior to the filing. Our analysis, and what I  
11 summarized, related solely to the value of those claims at  
12 the petition date. Obviously, another workstream will be the  
13 determination of whether there are preference actions or not,  
14 but even beyond that, to the extent that there were customers  
15 who, at one time or another add material balances and/or  
16 traded significantly on the exchange and generated material  
17 value for the exchange, those types of customers would be  
18 valuable, I believe, to the exchange going forward.

19 And the customer lists that we're talking about, I  
20 think, would be valuable to third parties if they were  
21 interested in acquiring that, because, ultimately, they're  
22 not focused on whether there's a balance at the time of the  
23 filing; they're focused on the extent to which those  
24 customers would trade and generate revenue for them going  
25 forward.

1 Q Mr. Cofsky, how did the results of the analysis you did  
2 inform you view, if at all, as to whether or not disclosure  
3 of the customer names on their own would jeopardize the  
4 debtors' ability to maximize value?

5 A He reinforced that belief. They validated that belief  
6 that those customers could be identified with reasonable  
7 effort and that to the extent that the names alone were not  
8 redacted and were released, customers would -- clients, other  
9 third parties that would otherwise need to expend resources  
10 not to solicit those customers and/or would need to  
11 compensate the debtor in order to acquire those identities,  
12 would no longer have an interest in doing so or would have a  
13 lesser, significantly lesser interest in doing so.

14 Q And does your view as to value of individual -- of  
15 customer names include both, individual and institutional  
16 customers contained on the customer lists?

17 A Yes, that's correct.

18 MR. GLUECKSTEIN: No further questions, Your  
19 Honor.

20 THE COURT: Thank you.

21 Cross?

22 MR. WENDER: Actually, Your Honor, there's  
23 additional, just some additional direct, please?

24 THE COURT: Oh, go ahead. Yep.

25 MR. WENDER: Thank you, Your Honor. For the



1 record, David Wender with Eversheds Sutherland, counsel for  
2 the Ad Hoc Committee of Non-U.S. Customers.

3 DIRECT EXAMINATION (Continued)

4 BY MR. WENDER:

5 Q Good afternoon, Mr. Cofsky.

6 Just a few short questions, because you spoke about  
7 disclosing the names and how that might impact the value.

8 The disclosure of the names or customer information,  
9 either by the debtor or other parties, that would similarly  
10 impact value; is that your understanding or belief?

11 A Yes, my belief is that disclosure of the names,  
12 regardless of who disclosed them, would degrade value.

13 Q This might be a dumb question and I apologize: Are you  
14 familiar with Bankruptcy Rule 2019?

15 A Not by the number.

16 Q That's appropriate.

17 It's a rule that requires when customers or creditors  
18 act in concert, they have to disclose names, address, and  
19 information relative to holdings.

20 If a group of creditors had to disclose their names,  
21 their address, and holdings, would that be detrimental to the  
22 value of those people, as well, and to the debtor?

23 A My belief is that disclosure of any customer identities  
24 would degrade value.

25 Q Great. Thank you.

1 THE COURT: Now, cross-examination?

2 CROSS-EXAMINATION

3 BY MS. SARKESSIAN:

4 Q Good afternoon, sir. Juliet Sarkessian, on behalf of  
5 the U.S. Trustee. I do have a few questions for you.

6 Now, some of your testimony related to the value of the  
7 customer names in a situation in which the debtors  
8 reorganized, correct?

9 A Correct.

10 Q And based on either what you've heard today or your  
11 familiarity with the debtors, do you have an understanding of  
12 approximately when the debtors believe they're likely to get  
13 a confirmed plan?

14 A Yes, I have a -- I saw the work plan that was put on  
15 the screen earlier.

16 Q Right. And it was second quarter, I believe, of next  
17 year, correct?

18 A I believe that's correct, yes.

19 Q And do you understand whether from the petition date,  
20 the customer accounts have all been frozen; is that right?

21 A That's my understanding.

22 Q Customers cannot get access to either their  
23 cryptocurrency or cash that they have in the accounts; is  
24 that right?

25 A That's my understanding.

1 Q And is it your understanding that that freeze would  
2 continue at least until the plan was confirmed and then went  
3 effective?

4 A I believe that would be the case; that's my  
5 understanding.

6 Q And so that would be more than a year with these  
7 accounts being frozen, correct?

8 A Unfortunately, yes, I think that's the math.

9 Q Customers can't even get to the cash that they have in  
10 the accounts, right?

11 A I believe that's correct, yes.

12 Q So, with that in mind, does the fact that those  
13 accounts have been frozen that long impact the value of the  
14 customer list? You know what? I'm sorry, let me withdraw  
15 that question. I forgot that we were talking about  
16 reorganization.

17 So, if the debtors reorganized, is it your belief that  
18 spite having their accounts frozen for over a year, that the  
19 debtors' customers will want to continue with the  
20 reorganized -- continue to be customers with the reorganized  
21 debtors?

22 A I do. I'm also hopeful that we can accomplish an  
23 outcome in a shorter period of time, but yes, I believe that  
24 at the time at which a reconstituted exchange is able to be  
25 stood up and customers have the ability to trade on that, I

1 believe that they will want to do so.

2 Q Can I ask you why you think that, for somebody who's  
3 not been able to get the cash out of their accounts, let  
4 alone, crypto, for over a year, that they're going to want to  
5 continue with the company that froze their accounts?

6 A Yes, it's a very good question. We believe that if an  
7 exchange is reorganized, it will be done so in a manner which  
8 will be regulatorily complaint, will ensure that the custody  
9 of the customer accounts going forward are unambiguously  
10 secure, and will provide a trading platform that will be  
11 first-class. And if given the opportunity, from a number of  
12 respects to participate on that exchange, as opposed to the  
13 exchanges that are currently available to them, they would  
14 much prefer to trade on that form of a platform.

15 And significantly, at the moment, and I believe highly  
16 likely, the customers will be, by far, the largest creditors  
17 of this estate and so if we reorganized the exchange going  
18 forward, those customers would be equity owners, potentially,  
19 of all, or a significant portion of that reorganized  
20 exchange. And so having the ability to transact on the  
21 exchange where they are equity owners, as opposed to  
22 transacting on another exchange where they're generating fees  
23 for another exchange that they don't own, I think, would be  
24 an easy question for them. I think they would much prefer to  
25 transact on an exchange where the fees that they're paying

1 are ultimately benefiting their own equity holders.

2 Q Is the concept that you're talking about with the  
3 customers being equity holders, well, first of all, what  
4 percentage of the equity do you think the customers will  
5 actually hold?

6 MR. GLUECKSTEIN: Objection, Your Honor.

7 BY MS. SARKESSIAN:

8 Q Are we talking about 10 percent or --

9 MR. WENDER: Objection, Your Honor. I think we're  
10 getting pretty far afield. And to the extent that we're  
11 talking about a plan that's in formation, I'm not sure that's  
12 appropriate testimony at this stage.

13 THE COURT: Yeah, I don't know what the relevance  
14 would be at this time.

15 MS. SARKESSIAN: Well, Your Honor, his testimony  
16 was that these customers, these names of customers are  
17 valuable if we reorganize --

18 THE COURT: Uh-huh.

19 MS. SARKESSIAN: -- with the idea that they're  
20 going to stay with the exchange. And he said one of the  
21 reasons that they're going to stay with the exchange is  
22 they're going to be equity owners. That was his testimony.

23 THE COURT: That's one of the possible outcomes, I  
24 think he said.

25 MS. SARKESSIAN: One of the possible outcomes. So

1 I'm asking him about that possible outcome.

2 THE COURT: What's the question?

3 MS. SARKESSIAN: The question is, when you're  
4 saying it's based on -- when you're saying your testimony is  
5 based on the assumption that they're going to be equity  
6 owners, what percentage of the equity are you anticipating  
7 that they would own?

8 THE COURT: Well, I think that's speculation at  
9 this point.

10 MR. GLUECKSTEIN: Yeah, I would object, Your  
11 Honor. I think Ms. Sarkessian's question does misstate the  
12 testimony, but I think this is all speculation at this point.

13 Mr. Cofsky simply testified as to one possible  
14 outcome here.

15 THE COURT: Sustained.

16 MS. SARKESSIAN: Thank you, Your Honor.

17 BY MS. SARKESSIAN:

18 Q Let me ask you a different question.

19 Your testimony that these customers would remain -- you  
20 believe that these customers would remain with the FTX  
21 platform in a reorganization and, therefore, their names are  
22 valuable, is that based on an understanding that they would  
23 be getting equity in lieu of getting their actual accounts  
24 back, the money that's in their actual accounts?

25 A I would hope that we can recover all of the value that

1 people put on the platform, but that remains uncertain. And  
2 so to the extent that those customers do not receive 100  
3 percent of their funds back for any reason, they will have  
4 incremental claims. And it's those claims that I'm referring  
5 to, which is the extent to which the estate will have assets  
6 to satisfy those claims.

7 And I do want to be clear and also responsive to your  
8 question, whether the exchange is reorganized or whether the  
9 exchange is sold or whether he ever the exchange is part of a  
10 partnership or receives investment from third parties for a  
11 portion of the equity, a significant portion of the value of  
12 that enterprise going forward, I believe, will be the  
13 customers, their identity, and the extent to which they're  
14 going to trade on this platform or another platform.

15 So, the questions that you asked were very good, it's  
16 just that -- and I apologize for not being able to be more  
17 specific, but we're at the early stages of evaluating which  
18 one of those potential alternatives, we think will maximize  
19 value.

20 Q I understand there's a lot of suppositions in your  
21 testimony, I was just trying to test them just to make sure I  
22 fully understand what your testimony was based on.

23 So let me ask a different question. You testified that  
24 you also believe that the names of the customers would be  
25 valuable -- that they could be monetized either just in and

1 of themselves, right, a customer list to be sold; is that  
2 correct?

3 A Yes, I think that's one alternative.

4 Q And then they also could be monetized as part of a 363  
5 sale, correct, was that also -- maybe I misstated it.

6 A Yes, I think those may be the same thing, but selling  
7 the customer lists solely or selling assets, together with  
8 the customer lists, whether those assets include an exchange  
9 or some other package of assets is one possibility I would  
10 think.

11 Q Okay. And in connection with that, did you have an  
12 opportunity to review the declaration of Jeremy Sheridan that  
13 has been filed in support of this motion?

14 A I did not.

15 Q Okay.

16 MS. SARKESSIAN: Just one moment, Your Honor. I'm  
17 sorry.

18 (Pause)

19 BY MS. SARKESSIAN:

20 Q Are you aware whether Mr. Sheridan -- sorry -- are you  
21 aware of whether the customers of FTX also used other  
22 platforms, other cryptocurrency platforms?

23 A I am not aware either way.

24 Q Okay. Now, I want to go to your testimony about  
25 determining that you looked at your -- people you were



1 supervising, you indicated, looked at approximately 200  
2 customers to see with just using their names, if more  
3 information could be located, correct?

4 A Yes, we looked at 200, precisely, and the objective was  
5 to determine whether we could identify those individuals and  
6 locate them.

7 Q So that was my question, what was the other -- you were  
8 looking for -- if you could find addresses, like, street  
9 addresses or email addresses or both?

10 A We wanted to determine using, again, limited resources,  
11 which was just Google, LinkedIn, and Twitter, whether we  
12 could identify and locate those individuals and find a way to  
13 contact them. And so that was the objective, was to  
14 determine the extent to which solely the identities of those  
15 individuals would be valuable. And part of that value is  
16 finding a way to actually locate these people and solicit  
17 them if you're a competitor and you want to get them to trade  
18 on your platform.

19 Q And so that would be either a street address or an  
20 email address or both?

21 A Or --

22 Q Or a telephone number?

23 A Or another way to locate them, for example, on  
24 Twitter --

25 Q Oh, okay.

1 A -- Facebook, other social media platforms.

2 Q Now, of those 200, do you know how many of them were  
3 individuals versus some type of corporate entity?

4 A I don't know offhand. That information was in the  
5 spreadsheet, but I don't recall offhand.

6 MS. SARKESSIAN: Those are all the questions I  
7 have for this witness.

8 THE COURT: Thank you.

9 MR. FINGER: Good afternoon, Your Honor.

10 THE COURT: Mr. Finger, good afternoon.

11 MR. FINGER: David Finger of Finger & Slanina, on  
12 behalf of the Media Intervenors.

13 At this time, I'd like to introduce to the Court,  
14 Katie Townsend of the Reporters Committee for Freedom of the  
15 Press. She's an attorney with them. Her admission *pro hac*  
16 *vice* has been granted, and with the Court's permission, she  
17 will present on behalf of the Media Intervenors.

18 THE COURT: Okay. Thank you.

19 MS. TOWNSEND: Good afternoon, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. TOWNSEND:

22 Q Good afternoon, Mr. Cofsky.

23 My name is Katie Townsend. I'm one of the attorneys  
24 representing the Media Intervenors in this matter. I'll try  
25 not to retread any ground that Ms. Sarkessian just covered.

1 But just to clarify, of the -- you have no idea sitting  
2 here today how many of debtors' nine million customers are  
3 already using a competitor platform; is that correct?

4 A I do not know that sitting here today; that's correct.

5 Q Of the top-200 customers that you directed your team to  
6 take a look at, you don't know how many of those 200 are  
7 already using a competitor platform, do you?

8 A I do not know that.

9 Q Does it matter for purposes of the value that you  
10 ascribe to the customer base, whether or not those  
11 individuals are using, or institutions, are already using  
12 another platform?

13 A To the extent that they are using another platform for  
14 a longer period of time, that injection risk to that value.  
15 It would degrade that value over time. It wouldn't eliminate  
16 that value, but, sure, we will be competing for those  
17 customers.

18 Q Just to be clear so I understand where the value here  
19 is coming from, the value of the customer base is their  
20 actual use of the platform, correct? It's not their name;  
21 it's whether or not they have an account on the platform; is  
22 that accurate?

23 A I don't think that's accurate if I understand the  
24 question properly. The customers are on the platform and  
25 occur on the list that I reviewed, the nine million

1 customers, because they traded on the platform. They,  
2 therefore, are, because they traded on the platform and  
3 generated revenues for the historical exchange, they,  
4 therefore, would more likely than not, be folks who are  
5 interested in crypto and would trade on crypto on another  
6 exchange or on this exchange.

7 And so the identities of these clients as being  
8 customers of FTX are valuable to competitors who are looking  
9 to attract additional customers to their platform. And it is  
10 much more efficient for them to solicit the customers of FTX  
11 directly to trade on their platform, as an example, than it  
12 would be to just have a generalized marketing endeavor.

13 Q But so long as those customers, even if they're trading  
14 on that other platform, continue to trade on the FTX  
15 platform, that doesn't affect the value of that customer to  
16 FTX, does it?

17 A Yes, it does.

18 Q How so?

19 A So, to the extent that we are not currently trading,  
20 over time, the longer those customers are on another  
21 platform, the greater the risk is. It doesn't mean that they  
22 become worthless, but it means that to the extent that we are  
23 reorganizing the platform, and we're well aware of this, and  
24 time is a critical issue, and so to the extent that we are  
25 able to reorganize the platform in a short amount of time and

1 get these customers an environment that is secure and  
2 regulatorily compliant that they can trade on, the less we  
3 have to worry about a competing platform.

4 But like any business, to the extent that your  
5 customers are utilizing services at a competitor, they're  
6 less valuable to you.

7 Q Let me ask it this way: If all nine million of the  
8 customers who had accounts at the FTX platform stopped using  
9 that platform, the value of that asset, that customer base is  
10 zero; is that fair to say?

11 A No.

12 Q What is the value of that asset if they are no longer  
13 using the platform?

14 A Well, those customers are no longer using the platform  
15 today because it doesn't exist. It doesn't mean that they  
16 don't want to use the platform --

17 Q Okay.

18 A -- and it doesn't mean that they have declared that  
19 they are never going to trade crypto, again. I think, quite  
20 to the contrary, as I said, with only 200 of the top  
21 customers, their claims as of the petition date were  
22 \$2.4 billion. I think those would be highly valuable  
23 potential customers for any platform and people would pay a  
24 lot of money to know who those people are and try to get them  
25 to trade on their platform. Whether they're on one platform

1 today, all the other platforms, I'm sure, would like to pay  
2 to know who those people are.

3 Q What's your basis for saying that you're sure that  
4 other platforms would pay to know who those people are?

5 A As was indicated in my original declaration, the other  
6 exchanges have programs in place. They pay money to look for  
7 referral programs. They pay commissions to solicit  
8 customers. So those customers are valuable and finding them  
9 is worth paying for. They've indicated that through their  
10 actions.

11 And in our early stages of outreach, with respect to  
12 the third-party process, we have received that input, that  
13 the customer lists themselves are valuable to people.

14 Q Have you done any kind of survey of customers to test  
15 their views on whether they intend to stay with the platform,  
16 whether it's reorganized or sold or continues in some other  
17 fashion?

18 A We have not had a formalized outreach process, but we  
19 have had a long engagement and robust process. The process  
20 that I described for the potential reorganization and the  
21 third-party outreach is being done, together with the  
22 Unsecured Creditors Committee that represents those  
23 customers, appeared we have regular conversations with the  
24 members of the Committee themselves, who are customers.

25 Q But you didn't attempt to undertake any other kind of

1 survey or research, in connection -- specific research to  
2 ascertain that information, did you?

3 A I want to make sure I'm -- we haven't undertaken a  
4 broad-market analysis, but I want to make sure I'm answering  
5 your question.

6 Is that what you're asking?

7 Q You haven't attempted to specifically identify or do  
8 any kind of, like I said, survey to identify how many of the,  
9 let's say top-200 customers, would want to stay on --  
10 continue to trade on the platform, have you?

11 A I have not asked that, no.

12 Q You testified previously that part of the basis for  
13 your opinions were bids that you examined in the Celsius  
14 bankruptcy; is that right?

15 A I don't think I said that.

16 Q I believe you testified on the January 12th, during the  
17 January 12th second day hearing, that we also -- and this is  
18 just to refresh your recollection:

19 We've also reviewed the bids that have been submitted  
20 in the Voyager case and in the Celsius case and took note of  
21 the fact that not only were customer assets and lists being  
22 acquired in and a value ascribed to the business itself, but  
23 that these were actually incremental elements of value, which  
24 would be allocated to each customer that went on to the  
25 acquirer's platform?

1 Do you recall that testimony?

2 A I do. I would prefer if you can put that in front of  
3 me, if that's possible, if you're going to ask questions  
4 about that.

5 Q Sure. If it's helpful, I don't intend to ask questions  
6 about the testimony itself, but I did want to ask a little  
7 bit about the bids that you've reviewed in the Celsius case.

8 A I don't know that I said "bids." I would like to see  
9 what I said to make sure that -- I believe it was five months  
10 ago and I want to make sure that I'm --

11 Q Well, let me strike that.

12 Have you reviewed bids in the Celsius bankruptcy case?

13 A In the Celsius case, yes, I did.

14 Q Okay. And there was recently a three-way auction in  
15 that are bankruptcy case; is that correct?

16 A That's correct.

17 Q Okay. And that three-way auction involved Fahrenheit,  
18 which was the winning bidder; is that correct?

19 A They have been selected as the highest and the best,  
20 but they have not, to my knowledge, been approved by the  
21 Bankruptcy Court yet.

22 Q Okay. And did you review Fahrenheit's bid in the  
23 Celsius bankruptcy?

24 A I did. I'm not sure if it's proper for me to be  
25 speaking anything further about that in this matter, given



1 the confidentiality agreements I have in that case, but yes,  
2 I did.

3 Q Well --

4 MR. GLUECKSTEIN: Your Honor, I'm going to object  
5 at this point. Mr. Cofsky has not testified at all today  
6 about anything in the record at this hearing with respect to  
7 Celsius. Counsel is now asking him about bids that are  
8 pending before another Court that he may have reviewed  
9 outside of his engagement for FTX, so I don't see how this is  
10 either responsive to his direct testimony or appropriate.

11 MS. TOWNSEND: Well, Your Honor, he previously  
12 testified that part of the basis for his opinions and the  
13 opinions that he's offering are bids that he reviewed in the  
14 Celsius bankruptcy matter and in the Voyager bankruptcy  
15 matter. There have been some developments in those cases  
16 that I think I'm entitled to ask him about, given that he's  
17 here to update his testimony on things that he has learned or  
18 what has proceeded since the January 11th hearing, so --

19 THE COURT: Well, I think he testified that he  
20 wasn't -- he didn't recall testifying that he had reviewed  
21 bids and that's why he wanted to review the actual testimony  
22 itself, but you didn't show him, so I'm not going to hold him  
23 to that.

24 And if he has confidentiality agreements and he's  
25 representing somebody else in connection with the Celsius

1 case, I'm not going to allow him to violate those  
2 confidentiality agreements.

3 MS. TOWNSEND: I'm happy to show him the  
4 testimony, Your Honor. He's already testified that in those  
5 bids that he reviewed, there was incremental value attached,  
6 not only to the customer base as a whole, but also the  
7 individual customer names. That's the entire basis of his  
8 testimony, so I would like to explore that to some extent.

9 THE COURT: Well, I don't know that it's the  
10 entire basis of his testimony, but go ahead.

11 MS. TOWNSEND: It's the value --

12 MR. GLUECKSTEIN: Your Honor, it's certainly not  
13 the entire basis and it's zero percent of his testimony  
14 today. And the bid that Counsel is asking him about now  
15 didn't exist in January. She's asking about a bid that, by  
16 her recitation of this, was just put before the Celsius  
17 Bankruptcy Court.

18 So, I renew my relevance objection.

19 THE COURT: I sustain it. Let's move on.

20 MS. TOWNSEND: Just one moment.

21 (Pause)

22 MS. TOWNSEND: No further questions, Your Honor.

23 THE COURT: Thank you.

24 Any other cross?

25 (No verbal response)

1 THE COURT: Redirect?

2 MR. GLUECKSTEIN: No further questions, Your  
3 Honor.

4 THE COURT: All right. Thank you.

5 You may step down. Thank you, Mr. Cofsky.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 THE COURT: And now we have Mr. Sheridan. I'm  
9 anticipating he's going to take more than 25 minutes?

10 MR. GLUECKSTEIN: Yes, Your Honor.

11 THE COURT: And I hate to leave witnesses --

12 MR. GLUECKSTEIN: Including the cross-examination,  
13 yes.

14 THE COURT: I hate to leave witnesses hanging  
15 overnight if it's not necessary. And since we're coming back  
16 tomorrow morning, why don't we just pick up with Mr. Sheridan  
17 in the morning.

18 Anything else we can do in the meantime before we  
19 recess for the day?

20 MR. GLUECKSTEIN: Your Honor, just to clarify,  
21 what time would you like to resume tomorrow?

22 THE COURT: Let's start at 9:30.

23 MR. GLUECKSTEIN: 9:30. All right. Thank you  
24 very much, Your Honor.

25 (Counsel confers)

1 THE COURT: All right. Anything else before we  
2 recess?

3 MR. GLUECKSTEIN: Not from the debtors, Your  
4 Honor. Thank you.

5 THE COURT: Okay. Thank you.

6 We'll recess until 9:30 tomorrow morning.

7 (Proceedings concluded at 1:35 p.m.)  
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 8, 2023  
William J. Garling, CET-543  
Certified Court Transcriptionist  
For Reliable

/s/ Tracey J. Williams June 8, 2023  
Tracey J. Williams, CET-914  
Certified Court Transcriptionist  
For Reliable

/s/ Mary Zajackowski June 8, 2022  
Mary Zajackowski, CET-531  
Certified Court Transcriptionist  
For Reliable

/s/ Coleen Rand June 8, 2023  
Coleen Rand, CET-341  
Certified Court Transcriptionist  
For Reliable